

EXHIBIT B

Deposition of Peter A. Morrison, Ph.D.

**NAACP, et al. v. State Board of Election Commissioners,
et al.**

December 1, 2023



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MISSISSIPPI STATE CONFERENCE OF)
THE NATIONAL ASSOCIATION FOR THE)
ADVANCEMENT OF COLORED PEOPLE;)
DR. ANDREA WESLEY; DR. JOSEPH)
WESLEY; ROBERT EVANS; GARY)
FREDERICKS; PAMELA HAMNER;)
BARBARA FINN; OTHO BARNES;) No. 3:22-cv-734-DPJ-
SHIRLINDA ROBERTSON; SANDRA) HSO-LHS
SMITH; DEBORAH HULITT; RODESTA)
TUMBLIN; DR. KIA JONES; MARCELEAN)
ARRINGTON; VICTORIA ROBERTSON,)

Plaintiffs,)

VS.)

STATE BOARD OF ELECTION)
COMMISSIONERS; TATE REEVES, in)
his official capacity as Governor)
of Mississippi; LYNN FITCH, in)
her official capacity as)
Attorney General of Mississippi;)
MICHAEL WATSON, in his official)
capacity as Secretary of State of)
Mississippi,)

Defendants,)

AND)

MISSISSIPPI REPUBLICAN EXECUTIVE)
COMMITTEE,)

Intervenor-Defendant.)

ORAL DEPOSITION OF
PETER A. MORRISON, PH.D.
DECEMBER 1, 2023

REPORTED BY: Stacy L. Jordan, CSR, RPR, CRR, CLR No. 7499

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1 ORAL DEPOSITION of PETER A. MORRISON, PH.D., a
2 witness produced at the instance of the Plaintiffs,
3 taken in the above-styled and numbered cause on the 1st
4 day of December, 2023, from 8:59 a.m. to 3:27 p.m.,
5 before Stacy L. Jordan, a CSR in and for the State of
6 Texas, Registered Professional Reporter and Certified
7 Realtime Reporter, taken in the law offices of Butler
8 Snow, LLP, 2911 Turtle Creek Boulevard, Suite 1400,
9 Dallas, Texas 75219, in accordance with the Federal
10 Rules of Civil Procedure.

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A P P E A R A N C E S

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ALSO PRESENT (Via Zoom):

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Mr. Javon Davis
Mr. Mike Wallace
Mr. Ming Cheung
Mr. Rex Shannon

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P R O C E E D I N G S

(December 1, 2023, 8:59 a.m.)

PETER A. MORRISON, PH.D.,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. SMITH:

Q. Good morning, Dr. Morrison.

A. Good morning.

Q. My name is Casey Smith. I'm an attorney with the ACLU. I represent the plaintiffs in this matter, which is Mississippi NAACP versus the State Board of Election Commissioners. Could you please state and spell your name for the record?

A. My name is Peter, middle name Alan, A-l-a-n, Morrison. And what else did you want? That's it?

Q. That's fine.

MS. SMITH: Unless you have any concerns about spelling it. Great.

Q. (BY MS. SMITH) Okay. Well, Dr. Morrison, thanks for taking the time to be here today. I believe you've been deposed before, so a lot of this might be familiar, but just in case, before we get started, I want to go over some ground rules. Okay?

A. Sure.

Q. Great. So your answers will be under oath,

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1 meaning you're swearing to their truthfulness and
2 accuracy. And the oath you took today has the same
3 effect as if you were testifying in court. Do you
4 understand that?

5 A. I do.

6 Q. And as you can see, this deposition is being
7 transcribed by a court reporter, so it's important that
8 you answer audibly because the court reporter will not
9 be able to record your answer if you just nod or shake
10 your head. Do you understand that?

11 A. I do.

12 Q. Okay. Great. And to make it easier for the
13 court reporter, I'll wait until you're finished with
14 your answers to my questions before I start speaking,
15 and if you could do the same, we can just avoid speaking
16 over each other. Does that sound good?

17 A. Yes.

18 Q. Great. Okay. And I'm going to be asking
19 questions; you're going to be providing answers. And
20 you must answer my questions unless your attorneys
21 instruct you not to answer and you choose to follow that
22 instruction. So do you understand that you must answer
23 my questions unless your attorney instructs you not to
24 answer?

25 A. I understand.

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1 Q. Okay. Great. And in general, unless your
2 attorney instructs you not to answer because the answer
3 is privileged, you still have to answer the question
4 even though there is an objection. Do you understand
5 that?

6 A. Understood.

7 Q. Okay. And, of course, it's important in this
8 process that we understand each other. So if I ask you
9 a question and you don't understand it, please tell me,
10 and I will rephrase it. Unless you tell me that you
11 don't understand a question that I ask, I'll assume that
12 you understand it. Is that fair?

13 A. Fair enough.

14 Q. Great. And, of course, if you need to take a
15 break at any time, please just ask; we'll do so. The
16 only rule is that we cannot take a break while a
17 question is pending. Does that work?

18 A. Yes.

19 Q. Great. And I also ask that you not discuss
20 your testimony with your attorneys during breaks, unless
21 you need to talk about privileged communications. Do
22 you understand that?

23 A. I do, yes.

24 Q. Great. And if you realize at any time during
25 the deposition that your answer to a previous question

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1 was not accurate or you want to clarify anything, just
2 let me know, and we can get that corrected on the record
3 today. Do you understand that?

4 A. I do.

5 Q. Okay. Do you have any questions about these
6 instructions before we get started?

7 A. No.

8 MR. CARDIN: Casey, let me ask you --

9 MS. SMITH: Yeah.

10 MR. CARDIN: -- in terms of -- would the
11 usual stipulation apply here, all objections except
12 those as to the form of the question will be reserved
13 until such time the deposition is sought to be
14 introduced into evidence?

15 MS. SMITH: Yes.

16 MR. CARDIN: Okay.

17 Q. (BY MS. SMITH) Okay. And is there any reason
18 that you cannot provide complete and accurate testimony
19 here today?

20 A. No, there isn't.

21 Q. Are you taking any medications or other drugs
22 that might impact your ability to give complete and
23 accurate testimony?

24 A. No.

25 Q. And what is your address?

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1 A. My address where I reside is Number 3 Eat Fire
2 Springs Road -- four words -- Nantucket, Massachusetts
3 02554.

4 Q. And do you currently work?

5 A. Do you mean am I employed?

6 Q. Yes.

7 A. I'm not employed. I do work as an applied
8 demographer on -- on a -- on projects that I'm requested
9 to work on.

10 Q. And is that with Peter Morrison & Associates?

11 A. That's correct.

12 Q. And what is the address of Peter Morrison &
13 Associates?

14 A. It's the same address as my home address.

15 Q. Okay. And when did you first learn that you
16 were going to give a deposition in this case?

17 A. I guess that would be when I was first
18 retained in the case, and that would have been sometime
19 in September of 2023, where I was approached to
20 participate in this on behalf of the defendants, and I
21 was told that there would be a deposition and
22 eventually, I'm presuming, trial testimony.

23 Q. Understood. So I have with me a deposition
24 notice that plaintiffs' counsel gave to defendants'
25 counsel saying we planned to take your deposition today.

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1 I'm going to mark that into the record as Exhibit 1.

2 (Exhibit 1 marked.)

3 Q. (BY MS. SMITH) Have you seen this document
4 before?

5 A. Truthfully, I don't recall whether I saw it or
6 not, but I -- and I know it's a formality. I was told
7 that this document has been submitted and that there was
8 going to be a deposition.

9 Q. Fair enough.

10 A. I can't say for -- actually whether I got a
11 copy and looked at it.

12 Q. Okay. Understood. But this document says --

13 A. Yeah.

14 Q. -- you're taking a deposition today --

15 A. That's right.

16 Q. -- under the Federal Rules of Civil
17 Procedure --

18 A. Right.

19 Q. -- in the case of NAACP versus State Board of
20 Election Commissioners, right?

21 A. Correct.

22 Q. Great. Okay. And, of course, without going
23 into the substance of any conversations with your
24 attorneys, what did you do to prepare for your
25 deposition today?

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1 A. Let me think about what I did here, other
2 than -- my initial response was I had requested that the
3 deposition be held virtually because it was a long trip
4 from where I was, and so forth and so forth. And
5 eventually, it turned out that, logistically, I think it
6 was a real nightmare. So I did agree to come here for
7 the deposition in person. What I did to prepare for it
8 was I would say about a week ago, I reviewed the file,
9 and I was -- I reviewed the plaintiffs' expert report,
10 in which I noticed that a reference that I had used,
11 which was a -- a technical study that had been conducted
12 some -- around 2012, I think -- I'm not sure of the
13 exact date, but quite a while ago -- had actually been
14 published in a peer-reviewed journal. And I noted
15 that that study, that technical study that I had been
16 relying upon, was now in a new form.

17 Q. Uh-huh.

18 A. And I definitely wanted to have a copy of
19 that. And I -- I'd like to say for the record that I
20 looked at it, and it was -- it -- it wasn't an update.
21 It was a study -- a technical study that had been
22 transformed through what's, obviously, a review process
23 by the authors and a lot of rewriting to clarify what
24 they said and brought into conformity with what would be
25 publishable in a well-respected peer-reviewed academic

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1 journal, which I think was Public Opinion Quarterly, or
2 something like that, that I recognized. So a primary --
3 a primary desire on my part was to get a copy of that
4 study --

5 Q. Uh-huh.

6 A. -- so I could see how the final peer-reviewed
7 version had -- had been drafted with all the caveats and
8 everything. And I looked at it and confirmed that,
9 basically, it was saying what I had heard them say in
10 the technical report --

11 Q. Uh-huh.

12 A. -- but it was much, much more clearly
13 explained --

14 Q. Uh-huh.

15 A. -- and that it really was the same study, just
16 that they had clarified the exposition probably in the
17 process of several rewrites to get it published in a --
18 in a journal like that.

19 Q. Okay. Thank you very much. So just to go
20 back and walk through that a little bit, you reviewed
21 the plaintiffs' expert report authored by Dr. D'Andra
22 Orey?

23 A. Whatever his name was, yeah.

24 Q. Okay.

25 A. There's one -- yeah, I reviewed -- I

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1 reviewed -- I reviewed what he -- what that person had
2 said.

3 Q. Okay.

4 A. I noted that there had been the publication
5 recently, the earlier report that I had been using.

6 Q. Okay. And by the -- the published 2- -- I
7 believe it was a 2011 paper from Berent, Krosnick and
8 Lupia?

9 A. That's the one.

10 Q. That's -- so -- so you looked at the fact that
11 they had published those initial report -- reported
12 findings in 2016 in -- I believe it's Public Opinion --

13 A. Public Opinion Quarterly.

14 Q. Okay.

15 A. Right. That's what I -- that's the --

16 Q. So you reviewed the 2016 Public Opinion
17 Quarterly --

18 A. Correct.

19 Q. -- study by those same authors and
20 concluded -- essentially, reiterated the same
21 conclusions?

22 MR. CARDIN: Object to the form.

23 MS. SMITH: Okay.

24 A. I would say that it more clearly stated the
25 conclusions and the -- you know, the qualifications that

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1 one would have, and it was more clearly explained what
2 they knew and what they didn't know.

3 Q. (BY MS. SMITH) Okay. So it more clearly
4 stated their findings from the 2011 --

5 A. Correct.

6 Q. -- piece?

7 A. And I took note of the fact that having been
8 peer-reviewed and published in a -- in a -- in a
9 high-quality journal, it was now something that I could
10 place greater reliance on because it had been
11 peer-reviewed.

12 Q. Okay. Did you review any of the other
13 articles cited in the Orey report?

14 A. I don't -- I -- I can't say that I recall
15 consciously reviewing them, but having seen them
16 footnoted in the report. But I have, you know, since
17 then reviewed other studies that -- that I -- I
18 discovered had been -- had been conducted, you know,
19 since I last looked at the -- at the file. I did not do
20 an exhaustive review of political-science literature
21 because I -- I'm a demographer, not a political
22 scientist. But I did want to get a sense of what the
23 state of knowledge was among political scientists.

24 Q. Okay. And do you recall off the top of your
25 head what any of those other articles that you reviewed

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1 in the literature since submitting your report were?

2 A. There -- I -- I don't recall the -- the
3 details, but I was just scanning through articles to say
4 my -- my -- the important criterion for me was: Is this
5 an article that was looking at a broad cross-section of
6 elections or was it a single election --

7 Q. Uh-huh.

8 A. -- at a point in time --

9 Q. Uh-huh.

10 A. -- or possibly a study of a specific set of
11 places or states --

12 Q. Uh-huh.

13 A. -- that included Mississippi or not?

14 Q. Uh-huh.

15 A. That was kind of my screening criterion. In
16 other words, if this isn't a study about Mississippi --

17 Q. Uh-huh.

18 A. -- and if it's not a study about elections
19 over a long period of time --

20 Q. Uh-huh.

21 A. -- I don't have any need to go into the
22 details of what it shows. So I looked for that, and
23 I -- I -- I don't think I saw anything that -- that
24 qualified under that category. So my review didn't
25 yield anything of great importance or new that would

1 cause me to want to spend any time looking at it.

2 Q. Okay. Understood. And we'll come back to
3 some of that later.

4 A. Sure.

5 Q. Thanks for walking me through that.

6 So did you meet with anyone to prepare for
7 your deposition today?

8 A. Yes, I did.

9 Q. Who did you meet with?

10 A. I met with both of the attorneys sitting next
11 to me, and that commenced sometime yesterday midday.

12 Q. Okay. And how many meetings would you say you
13 had?

14 A. One lengthy meeting.

15 Q. One lengthy meeting?

16 A. And I guess you could call having dinner
17 together. Technically, we --

18 Q. Uh-huh.

19 A. -- you know, we didn't talk just about dinner.

20 Q. Well, that's nice. And for how -- how long
21 did you meet for?

22 A. I think it was about four hours.

23 Q. Okay.

24 A. They -- yeah, it was about four -- all in all,
25 it was probably five hours --

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1 Q. Uh-huh.

2 A. -- of substantive meeting, where we were
3 focusing on something that was about this.

4 Q. Okay. And did you meet with anyone else to
5 prepare for your deposition today?

6 A. No.

7 Q. Did you speak with anyone else about the
8 deposition?

9 A. I spoke with my wife about it.

10 Q. Great. So how much time, including the review
11 of the literature and the meetings and any other
12 preparation, would you say that you spent preparing for
13 the deposition today?

14 A. I don't know if I could give you an exact
15 estimate, but I spent -- I -- I'll preface this by
16 saying that this was something that was kind of on the
17 shelf. It came to life. I said, "I'm going to get
18 started on this starting on Day X," because I had a lot
19 of other things going on. And I would say over the
20 course of the last four days, I've probably been
21 spending the primary amount of my work time on this
22 case, and I would say I've probably gone -- you know,
23 refreshed my memory on a lot of aspects of it and
24 reviewed my initial report to -- to refresh my memory
25 about what I had found and what I had -- how I had

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1 reached the conclusion. And I think the answer to your
2 question is probably several workdays getting back up to
3 speed and then looking at the new literature, screening
4 it, trying to see whether there was anything new I
5 needed to be aware of that I hadn't looked at for
6 several months.

7 Q. Okay. Did you jot down any notes while
8 preparing for this deposition?

9 A. I'm sure I did, yeah.

10 Q. Okay. Did you highlight any documents while
11 preparing for this deposition?

12 A. I highlighted my own report to -- so that when
13 I came back to it a couple of days later, I could
14 remember the key points I had made. I -- I had looked
15 through -- I -- I -- what I did do with some, you know,
16 degree of thoroughness was look at the original 2012
17 technical report, as I referred to it --

18 Q. Uh-huh.

19 A. -- the one that was, as I say, started as a
20 technical report --

21 Q. Uh-huh.

22 A. -- in which I had noted what they said they
23 found.

24 Q. Uh-huh.

25 A. And the -- mainly things in the abstract. You

Page 21

1 know, I'd just, "They -- they said this in that report."

2 Q. Uh-huh.

3 A. And then I looked at the published report, the
4 peer-reviewed one that came out, and I said, "Were they
5 still saying the same thing?"

6 Q. Uh-huh.

7 A. And that's the kind of comparison I made.

8 Q. Uh-huh.

9 A. And what I noted was, yes, they said the same
10 thing --

11 Q. Uh-huh.

12 A. -- but they did it more succinctly and in a
13 way that was clearer to me what they knew they knew and
14 what they knew they didn't know.

15 Q. And just to go back to the notes you took and
16 the highlighting you did on any documents, did you bring
17 those notes or those highlighted documents with you
18 today?

19 A. I -- I don't have them here with me in the
20 room today, no.

21 Q. Okay. Are you able to provide those notes or
22 that highlighting if requested?

23 MR. CARDIN: Object to the form.

24 You may answer the question.

25 A. I understood that my notes are privileged to

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1 myself. So I would say I'm not -- I was not expecting
2 to do that. And had I been told beforehand that I would
3 have to turn them over, I would not have taken notes on
4 things.

5 Q. (BY MS. SMITH) Okay.

6 A. I've never -- I've not encountered anywhere
7 I'm told if I took notes on something, I have to turn
8 them over.

9 Q. Okay. We can move on, but thanks for walking
10 me through all of that.

11 So you understand that this deposition
12 relates to litigation brought under Section 2 of the
13 Voting Rights Act?

14 A. Yes, I do.

15 Q. Okay. And I believe you said earlier you
16 first learned about this litigation in September
17 of 2023. Is that right?

18 A. It was about September, yes.

19 Q. And how did you learn about it?

20 A. To the best of my recollection, I got a call
21 from Mr. Cardin, and I -- I asked him, you know, what
22 the schedule was.

23 Q. And what were you asked to do with respect to
24 this case?

25 A. I -- I think he just said, "I'm sending you

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1 the complaint, and look it over." You know, that --
2 that was, basically, the sum of what he said that --
3 that he wanted me to know and he wanted me to be
4 prepared for. And I don't -- I don't recall the details
5 that he -- you know, I -- I'm sure I asked him, you
6 know, "Where did this come from? You know, what do you
7 know about it?"

8 Q. Uh-huh.

9 A. And I -- I just don't remember any of the
10 details other than I was scheduled -- schedule-oriented.
11 I said, "Just tell me what you need when and let me look
12 at the complaint, and then is there any -- anything else
13 I need to see, you know?"

14 Q. And what were you asked to do with respect to
15 writing an expert report?

16 A. I was asked a very specific question as the
17 purpose driving my report, and that was to compare the
18 political participation of Black voters and White voters
19 in the state of Mississippi over time and to ascertain
20 what differences there were, how participation might
21 have changed. And I immediately recognized that as a
22 demographer, that I've got the perfect dataset for doing
23 this, you know, which I used, and...

24 Q. That being the Census Current Population
25 Survey --

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1 A. That's right.

2 Q. -- or the CPS?

3 A. That's right. I said I've used that before.
4 I know quite a bit about it. It's going to take some
5 effort to put it together in the form that I want it. I
6 don't know how far back it goes, but it is -- it has all
7 the attributes of what I would need. First of all, it
8 is a scientific survey as opposed to administrative
9 record data, which are typically what I find used by
10 political scientists who are looking at an election
11 where they're -- they're working with the kind of data
12 that are collected in conjunction with a -- with an
13 election. And administrative survey data are collected
14 and used for the purpose of doing something rather than
15 conducting a scientific inquiry; whereas, the Census
16 Bureau is in the business of publishing data that allow
17 one to pose a question and come up with a -- with a
18 scientifically based answer, qualified by the
19 limitations of what is known to be the -- what are known
20 to be limitations of the scientific dataset that has
21 been collected. That's what the Census Bureau does, and
22 that's the kind of business I'm in. I'm a demographer
23 who works with those kind of data.

24 Q. Understood. And the CPS is the only dataset
25 you relied on in your report?

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1 A. I'm trying to think if there's anything else I
2 relied upon. I -- I think it's -- well, it certainly is
3 the primary one. I -- I don't think I relied on any
4 other data other than to possibly -- I guess I did rely
5 on one other source of Census data, which was the
6 American Communities Survey, which allows one to
7 distinguish between the entire voting age population and
8 the citizen voting age population, because I had to be
9 sure that there wasn't a big gap when the Census Bureau
10 changed its method of this four-decade Current
11 Population Survey from studying 18-year-olds to just
12 18-year-olds who were citizens, and I wanted to be sure
13 that I understood that that wasn't a change that was
14 going to affect any of my conclusions. So I -- I
15 believe just the ACS and the CPS are the only datasets
16 that I -- I used.

17 Q. And -- got it. So the ACS you used for that
18 more limited purpose of seeing if the change in
19 categorization --

20 A. Yeah.

21 Q. -- of citizenship affected your results; but
22 otherwise, you relied on the CPS; is that right?

23 A. Correct.

24 Q. Okay. Going back to your communications
25 before writing your report, did counsel provide you with

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1 any facts that you considered in forming your opinion,
2 other than the complaint that you just mentioned?

3 MR. CARDIN: Object to the form.

4 You may answer the question.

5 A. Well, I -- I know that I -- I -- in
6 conversations with Mr. Cardin, I said, I know the last
7 time I looked at elections in Mississippi on an entirely
8 different case, I was astonished at the very high -- the
9 very high proportion of elected officials in Mississippi
10 who are African-American -- who were African-American in
11 a lot of local elections that I'd looked at. Not the
12 ones we're talking about in this case, but in a previous
13 case. I had assembled a large database. I'm -- we --
14 I'm sure I mentioned that to him, and I think he -- you
15 know, we conversed about that briefly.

16 Q. (BY MS. SMITH) Okay. But that's not
17 reflected in your report or part of the --

18 A. No. It --

19 Q. -- opinions --

20 A. It -- it doesn't really have anything to do
21 with this report. It just was -- as I said, I know that
22 I've looked at this before. I have some experience
23 looking at Mississippi local elections as opposed to the
24 carefully chosen every-two-year elections that the --
25 the CPS does, and I said I was amazed at the number of

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1 elected officials at the local level who are
2 African-American, and we had a conversation about that.

3 Q. Okay. But counsel didn't provide you with any
4 datasets to rely on?

5 A. No.

6 Q. Or any articles to rely on?

7 A. No. That was simply reminiscing about an
8 earlier case.

9 Q. Understood. Did counsel provide any
10 assumptions that you relied on in forming your opinions?

11 MR. CARDIN: Object to the form.

12 You may answer the question.

13 A. No, I -- I -- I've -- I've never -- he did not
14 do that, and I've never had anybody say, "Well, I'd like
15 you to make this assumption." I said, "I'll choose the
16 assumptions I make and tell you what they are."

17 Q. (BY MS. SMITH) Great. Have you had any
18 communications with the defendants themselves?

19 A. No, not that I can think of.

20 Q. And did anyone help assist you in your work on
21 the case?

22 A. I'm trying to think. Oh, yes, I -- I -- I
23 have a colleague whose name is Thomas Bryan, who is a
24 former Census Bureau statistician. And he actually is a
25 coauthor on a book that we had written, prepared, and I

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1 rely on him when I want to get an extract of Census data
2 that I know I could do myself, would take me a lot of
3 time that he routinely would have done when he was a
4 Census Bureau employee. And I said, you know, "Can you
5 get all the, you know, data that I need going back 40
6 years or so? And where do I go to get it, and is it
7 easy enough for me to get it or can you just get it for
8 me because you can do it more efficiently?"

9 And I know that one of the advantages of
10 dealing with a former Census Bureau statistician is that
11 these people have been trained to Census Bureau
12 standards, so you're getting someone who is like a brain
13 surgeon, and you say, when it's my brain, "Be really
14 careful, be sure it's right, don't make any mistakes."
15 And that's the understanding we have, and I rely on him
16 simply for data assembly.

17 Q. So Thomas Bryan assembled the Census data that
18 you used in your report?

19 A. He -- he -- he extracted it from the Census
20 Bureau website so that I would have it in a form that I
21 could use. And I asked him -- I instructed him how I
22 wanted it displayed in certain graphic forms, and he
23 executed those things for me so that they would be
24 displayed that way.

25 Q. Okay. And about how many times did you meet

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1 with Thomas Bryan when you were preparing the report?

2 A. I never met with him. I would just deal over
3 the phone or --

4 Q. Oh.

5 A. -- you know. But I would say perhaps three
6 times. I made a request; he did it. I said, "Now let's
7 graph it." Second request, something like that. I
8 mean, we have a normal procedure. I'd just say, "I need
9 these data. Is this something you can get for me, and
10 how long would it take?" And when he says it would take
11 him an hour, I'd say, "Well, it'd take me a day." I
12 said, "You do it, and be sure you check it, and we'll go
13 from there."

14 Q. So did Thomas Bryan make the graphs in your
15 report or the charts in your report?

16 A. He -- I -- I told him what I wanted to
17 display, and I said, "I want to show a time-series
18 trend, but I don't want to have a big data table. I
19 want to have a graphic display that makes it clear to
20 just an intelligent reader what's going on and what I'm
21 saying." And he did it according to my instructions.

22 Q. Understood. And we'll talk about this more
23 later, but counsel provided us with a copy of a
24 spreadsheet that you relied upon in forming your
25 opinions in your report. Did he produce that

1 spreadsheet?

2 A. Yes.

3 Q. Okay. Okay. I think I'll move on. What is
4 your understanding of the claims brought by the
5 plaintiffs in this case?

6 A. I can't -- I can't say that I really have an
7 understanding of what it is they're claiming, but I do
8 know what it is that I am stating, and I guess that's
9 because I -- I just didn't understand why they thought
10 what they did. I -- I haven't paid much attention to
11 their claim. What I know is what I know, and it seems
12 to contradict what might be claimed by plaintiffs in
13 this case.

14 Q. Okay. And you understand that you're being
15 proffered as an expert in this case?

16 A. Yes.

17 Q. What are you an expert in?

18 A. Applied demography.

19 Q. Okay. And do you know what the duties of an
20 expert in a federal case are?

21 MR. CARDIN: Object to the form.

22 You may answer the question.

23 A. I -- I don't have a detailed understanding of
24 what they are. I know that this is a case where
25 plaintiffs make a claim. I know what I have found, and

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1 I understand that what I have found totally contradicts
2 what plaintiffs are claiming. I don't know the details
3 of the claim, but I know that, you know, there's --
4 there's, obviously, a claim of, you know, racial --
5 racial discrimination or something under Section 2, and
6 I'm saying all I know here is what the data show, for
7 what it's worth, about the various claims the plaintiff
8 is making.

9 Q. (BY MS. SMITH) Okay. And what's your
10 understanding of what "vote dilution" means?

11 MR. CARDIN: Object to the form.

12 You may answer the question.

13 A. I -- I know quite a bit about what Section 2
14 says about what constitutes vote dilution, and it's a
15 lot of different direct and indirect things that can be
16 done. I can't give you the full recitation of it, but
17 practices that directly or indirectly limit the fair
18 participation of voters regardless of race, ethnicity,
19 language and other characteristics. So anything that
20 kind of -- my plain understanding is anything that kind
21 of tilts the balance against what DOJ recognizes as a
22 protected racial or language minority is something that
23 a plaintiff can make a claim about and say they didn't
24 directly do something, but they did something
25 indirectly. And I have a lot of experience doing that,

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1 and that's what the book that I and Thomas Bryan wrote,
2 which is how you address the whole spectrum of these
3 claims under Section 2. That's -- with -- with
4 demographic data. That's -- so I -- I have a deep
5 understanding of what it is that can be pointed to as
6 indirectly or directly limiting the -- the voting rights
7 of a protected group.

8 Q. (BY MS. SMITH) Thank you. And you mentioned
9 earlier how, in part of your preparation, was staying
10 up-to-date on the literature on this area. Would you
11 typically try to stay up-to-date on the literature
12 you're opining on as an expert?

13 A. Definitely stay up-to-date on what kinds of
14 claims are being made and also what court rulings are
15 saying about the claims and how they're recognizing or
16 refusing to acknowledge or, I should say, refusing to --
17 to rule that something was or was not a violation. I --
18 I do keep up on that quite directly in the news media,
19 and I have a whole -- I keep a whole file of, you know,
20 just the latest cases that have been, you know, decided.
21 I -- my specialty is more in the local level rather than
22 the state level, but I've -- in the last year or so,
23 there have been so many decisions, I've just kept track
24 of everything.

25 Q. And what about academic literature? Would you

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1 stay up-to-date on the academic literature that relates
2 to the issues you're opining on?

3 A. Yes, I especially try to stay up-to-date on
4 the political-science literature because that's where a
5 lot of the most important things are being done.
6 Generally -- well, it -- basically, it's an inter- --
7 it -- you know, it's just an interdisciplinary field.
8 So I keep up on everything that I am aware of.

9 Q. Understood. So now I'd like to mark as an
10 exhibit the report that you submitted in this case on
11 October 16th. That's going to be Exhibit 2 in the
12 record.

13 (Exhibit 2 marked.)

14 A. Did you say Exhibit 2?

15 Q. (BY MS. SMITH) Yes. So it says Exhibit 3
16 because that's how it was filed --

17 A. Oh. All right.

18 Q. -- but the Exhibit 2 is marked at the bottom.

19 A. I see. Okay. I gotcha. Got it.

20 Q. So do you recognize this -- this document?

21 A. Yes, I do.

22 Q. And this is the October 16th, 2023 report that
23 you submitted in this case?

24 A. That's correct.

25 Q. Does this report contain all of the opinions

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1 that you're offering as an expert in this case?

2 A. It contains all of my opinions, and -- and
3 there are some updates that I would like to make, which
4 would be to reference the latest published version --

5 Q. Uh-huh.

6 A. -- of the 2012 technical report -- I think it
7 was 2012 -- so that it is part of my report. I don't
8 quite know how that would come to be, but I'm now
9 relying on that published version, the peer-reviewed
10 version.

11 Q. Okay. And other than the update to citing to
12 the 2016 published version of the Berent, Krosnick and
13 Lupia study that you're referring to, are there any
14 other updates to the report that you want to make?

15 A. No.

16 Q. Okay. And we can -- we'll talk more about the
17 2006 piece a bit later.

18 Okay. So let's turn to Appendix B on
19 Page 10.

20 A. All right.

21 Q. Tell me when you're there. Oh, great. Is
22 this your CV?

23 A. Yes, it is.

24 Q. Is this an accurate and up-to-date CV? Feel
25 free to --

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1 A. Yes, it is. I think the date is at the --

2 Q. Great.

3 A. Yes, it's up-to-date.

4 Q. I'd like to talk a little bit about your
5 background. What is your educational background?

6 A. Well, as you see on the top of Page 10, I have
7 a bachelor's degree in sociology from Dartmouth and a
8 Ph.D. in sociology from Brown, and I -- that -- well,
9 that's my academic background.

10 Q. And can you just describe your work
11 experience?

12 A. I was -- I was an assistant professor at the
13 University of Pennsylvania for a couple of years, at
14 which point I was invited to join the RAND Corporation's
15 research staff, where I spent several decades of my work
16 career, basically, as their only demographer. And
17 eventually, they referred to me as senior demographer.
18 And I then began to do work that could not be done under
19 the auspices of RAND as a client but could be done by me
20 as an independent consultant, as an applied demographer,
21 and I began to do that sometime around the 1980s a
22 little bit. And then the -- my involvement grew, and I
23 became increasingly involved in that.

24 Around 1990 -- 1990, 1995 or so, I changed
25 my status from being an employee at RAND to wanting to

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1 be just a -- a resident consultant, of which they have
2 hundreds. I shouldn't say hundreds. They have -- they
3 have some resident consultants and hundreds of
4 consultants. So the work that I was doing was not a
5 part of -- I -- it was not something that they would be
6 accused of being involved in.

7 Q. Uh-huh.

8 A. They didn't want to have anything to do
9 with -- you know, with what I was doing, but they said
10 you can do it as long as it's not directly involved with
11 RAND. So that became my modus operandi, and I remained
12 a resident consultant for probably 10 or 15 years. And
13 since then, I have -- my -- my ties with RAND now are as
14 an alumnus, and I do all of the work in the areas of
15 which my expertise lies as part of Peter A. Morrison &
16 Associates, Incorporated.

17 Q. Understood. So I'll just quickly walk through
18 that. So you now have your own consulting firm, and
19 you've had that firm since 2009. Do I have that right?

20 A. Oh, that -- it was established -- I think it
21 was established back in the 1990s. So that firm has
22 existed, and it is now my exclusive point of contact
23 with the workforce, you might say.

24 Q. Great. And you worked at the RAND Corporation
25 about 40 years; is that right?

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1 A. Something like that, yeah.

2 Q. Okay. And you taught at University of
3 Pennsylvania about two years?

4 A. Yes. And then I've -- I've actually -- I
5 mean, I've been involved with academia throughout my
6 career just because I -- I attend the meetings of the
7 professional associations of demographers every year.
8 And I've been part of that group as kind of a person who
9 is -- is engaging in applied demography, which was a
10 tiny field when I entered the field -- the academic
11 field of -- of demography and has now become a much
12 bigger field. And, in fact, academic demographers are
13 now being trained as applied demographers --

14 Q. Uh-huh.

15 A. -- to work outside of academia. And there's a
16 large overlap, so we sort of all are involved both with
17 academic research and with applied research.

18 Q. Okay. Did you teach any classes at Penn?

19 A. I did. I taught a class in introductory
20 statistics to undergraduates.

21 Q. Okay.

22 A. And I -- throughout my career, I have given
23 presentations at meetings of demographers, and in the
24 last few years, have taken to giving sort of mini
25 courses in, you know, how you go about assembling data

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1 and addressing a voting rights case so that applied
2 demographers understand what's going on when their data
3 are being used for that purpose.

4 Q. Have you ever taught a political-science class
5 at any institution, at Penn or --

6 A. Not a political-science class, but I -- I have
7 coauthored papers with political scientists. So I --
8 I'd say I have a close connection with political
9 scientists who -- whose skills and interests overlap
10 with demographic data.

11 Q. And you mentioned you're a demographer. What
12 does an applied demographer do?

13 A. Applied demographers are concerned primarily
14 with applying demographic knowledge rather than
15 advancing the frontiers of demographic knowledge. I
16 think that's the simplest way to explain it.

17 Q. And you're not a political scientist, you said
18 earlier?

19 A. I am not a political scientist, no.

20 Q. Do you have any formal training in political
21 science?

22 A. I have only the experience that's built up
23 over 30 years of collaborating with political
24 scientists.

25 Q. So that's not formal training as a --

1 A. Not formal training, but --

2 Q. -- political scientist, but collaboration?

3 A. Well, I would say it amounts to on-the-job
4 training. So I -- I would -- I wouldn't agree that I
5 don't have any training. It's just not formal classroom
6 training. But I have -- I regularly call upon
7 colleagues who are political scientists with whom I have
8 coauthored papers and say, "Can you fill me in on what's
9 going on with this?"

10 Q. Understood. Have you ever held an appointment
11 in a political-science department?

12 A. No.

13 Q. What about in a statistics department?

14 A. Not in a statistics department, no.

15 Q. Are you an expert in the methods used to
16 analyze surveys?

17 A. I would say I have -- I'm qualified to work
18 with survey data, but I -- I don't consider that to be a
19 central part of my expertise. I know -- I know what
20 surveys are, I know what I need to do, you know, to
21 adhere to the standards, but I don't know how to put a
22 survey together from scratch.

23 Q. Are you an expert in survey design or
24 sampling?

25 A. I know -- I know about survey design, and I

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1 know about sampling to the extent that users of those
2 data need to know.

3 Q. Okay. So as a user of surveys --

4 A. I'm -- I'm a -- I'm a knowledgeable user of
5 survey data.

6 Q. Okay. But not an expert in survey designs
7 specifically?

8 A. That's not a central part of my expertise, no.

9 Q. Understood. Are you an expert in voting
10 behavior?

11 A. I know enough about voting behavior to study
12 it, but that's not a central part of my expertise.

13 Q. And are you an expert in assessing voter
14 turnout or participation?

15 A. I've had quite a bit of applied experience
16 assessing it, and, again, it's not a central part of my
17 expertise, but I have working expertise to -- in using
18 data, those data.

19 Q. Are you familiar with the term "ecological
20 inference analysis"?

21 A. Yes, I am.

22 Q. Do you know how to run an ecological inference
23 analysis?

24 A. I know how they're run, but I wouldn't know
25 how to do one myself unless I was -- had a political

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1 scientist to take me through step by step. But I
2 understand how it's run analytically, and I understand
3 what its limitations are and how inferences are drawn
4 from the results of ecological inference.

5 Q. Have you ever run one yourself?

6 A. No.

7 Q. So a few additional questions about your work
8 as an expert. What's your usual rate that you charge?

9 A. I'm -- I'm currently charging \$375 an hour for
10 the work I do, and I charge something around \$500 per
11 hour for any deposition or trial testimony.

12 Q. And is that the rate you're charging for your
13 work in this case?

14 A. I believe it is, yes.

15 Q. How many hours have you spent on your work in
16 this case, about, would you say?

17 A. I can't give you an honest answer to that. I
18 mean, I -- I can't give you a -- even an approximate
19 estimate because I -- I haven't had time to put together
20 my billing in the last month and a half.

21 Q. Okay. How much have you billed for your work
22 in this case?

23 MR. CARDIN: Object to the form.

24 A. I don't recall. I -- I'd have to look it up.

25 Q. (BY MS. SMITH) And what percentage of your

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1 income every year comes from doing expert work? Is it
2 all of it, now that you've retired from RAND?

3 A. You would have to define as what you mean by
4 "income." And I'm asking that as -- speaking to someone
5 who would say, "Well, the definition of 'income' is."
6 If you want to know do I earn income other than what I
7 live on from my family -- my and my spouse's retirement
8 accounts, that's a major part of our income, and I would
9 say my consulting work is a significant portion of our
10 total annual income.

11 Q. What about -- you don't have any other
12 employment currently; is that right?

13 A. Not now, no. I used to have other employment,
14 though.

15 Q. Okay. No, thank you for --

16 A. Sure.

17 Q. -- for --

18 A. Right, right.

19 Q. -- for helping me clarify my question there.

20 Is payment of your fees contingent on the
21 outcome of the case in any way?

22 A. Not at all, no.

23 Q. And do you know who's responsible for paying
24 your bills?

25 A. The defendant.

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1 Q. Okay. And generally speaking, are you
2 confident in the report that you submitted in this case?

3 A. I'm very confident in this report.

4 Q. That it comports with your professional
5 standards?

6 A. Yes.

7 Q. Is there any information you would have liked
8 to have but didn't in writing your report, other than
9 the 2016 Berent, Krosnick and Lupia article we've talked
10 about?

11 A. You mean is there anything that I could have
12 had and wanted but couldn't get my hands on it --

13 Q. Yeah.

14 A. -- or -- I mean, I'm not going to dream and
15 say, "I wish, you know, something was this." But, no,
16 there's nothing -- nothing that I needed that I could
17 not obtain.

18 Q. Okay. Let's turn back to Appendix A, Page 9
19 now. We're going to talk a little more about your other
20 expert work. So do you recognize this document as a
21 list of your prior expert work --

22 A. Yes.

23 Q. -- over the past four years?

24 And it's up-to-date?

25 A. It's up-to-date as of October 9th, yes.

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1 Q. Has anything changed since October 9th that
2 you know of?

3 A. Let me think about that. No, I -- I -- I
4 think had there been anything, I would have added it in.
5 I haven't submitted any reports or testimony since
6 October 9th.

7 Q. Great. Across your whole career, I know you
8 may have testified a lot, so I don't -- just give me --
9 could you give me your best estimate of how many times
10 you've testified in a case involving redistricting?

11 A. If I could say -- let's just say it could have
12 been as many as 100 times. Probably not quite 100, but
13 just take that as a round number. It could be 75 times.
14 Of 100 times, I'd say probably 80 times out of 100 --
15 did you say in a voting-rights case or all -- all cases?

16 Q. In a redistricting case.

17 A. Oh, redistricting case.

18 Q. Uh-huh.

19 A. Probably more like 50 in that case. And of
20 those, I'd say most were on behalf of the defendant.
21 Some have been on behalf of plaintiffs, but that would
22 be maybe one out of every five, one out of every 10.

23 Q. Okay.

24 A. I'm just -- these are ballpark estimates. I
25 just want you to know that I do not testify exclusively

1 for defendants. I have testified for plaintiffs in at
2 least several cases I can point to.

3 Q. Okay. Yeah, let's talk a little bit more
4 about those. So did you testify in a case involving a
5 challenge to county districts here in Dallas, Texas?

6 A. I think that was one of the cases that I was
7 working for the plaintiffs.

8 Q. And that's the Harding versus Dallas County
9 case? I think it's listed here as Number 7.

10 A. Let's see. That's what it says, yes.

11 Q. Was that a -- do you recall if that was a
12 Section 2 case brought by a group of White plaintiffs?

13 A. I'd have to go back and check my records, but
14 I think -- I think you're correct on that, but I don't
15 want to say I know for sure. That's -- that's my
16 recollection. It was quite some time ago.

17 Q. And do you remember if you drew a remedial
18 plan that would have provided White voters with a White
19 opportunity district in Dallas County?

20 A. I -- I can't say I recall clearly whether or
21 not I did that, but that -- I -- I don't know -- I mean,
22 I know that there was some boundary drawing or boundary
23 evaluation, but I don't know if it's as you stated it.
24 So I wouldn't want to say yes. I'd say I don't recall
25 on that.

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1 Q. That's fine. And did you testify in a case
2 involving a challenge to Maryland's congressional
3 districting plan? And I believe that's Fletcher v.
4 Lamone.

5 A. Where have we got that at?

6 Q. That's actually from more than four years ago.
7 So 2011.

8 A. Yes, I do recall being involved in that case,
9 as well, and I don't recall very much about it. I'd
10 have -- I'd have to look back. That was a long time
11 ago.

12 Q. Did that case, to your recollection sitting
13 here today, challenge the No Representation Without
14 Population Act, which was a law that was passed in
15 Maryland to address the counting of prisoners as
16 residents in their place of incarceration?

17 A. I don't recall that as being a part of that,
18 the case you're referring to. I --

19 Q. Have you ever --

20 A. I --

21 Q. Oh, sorry.

22 A. Yeah, I -- I just -- I recall there was a case
23 in that state involving something, and it was a long
24 time ago. I just would have to check the record --

25 Q. Okay.

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1 A. -- check my own records of what -- what it was
2 about.

3 Q. Have you ever testified on behalf of a group
4 of Black plaintiffs in a Section 2 Voting Rights Act
5 case?

6 A. I don't really think of cases that way. I --
7 I honestly can't answer it. I don't look to see is the
8 plaintiff here a Black plaintiff. I just say which side
9 am I working for. I don't look at the race of the
10 people that they put up as the plaintiffs or the
11 defendants. So I -- I can't answer that question --

12 Q. Okay.

13 A. -- without looking at the caption on the front
14 of the thing.

15 Q. Okay. So none that you want to point me to,
16 sitting here today?

17 A. Nothing -- I can't honestly answer your
18 question for any of them.

19 Q. Okay. Have you ever been disqualified from
20 testifying by a Court?

21 A. Never.

22 Q. Okay. I want to talk about another case where
23 you served as an expert, and this time, it's for a
24 defendant. Do you remember testifying for defendants in
25 the case United States versus Village of Port Chester?

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1 A. I remember the place named Village of Port
2 Chester, but that's about the extent of my recollection.
3 I would -- you can go ahead and ask questions, but I
4 don't think --

5 Q. Sure.

6 A. I'd answer them --

7 Q. Okay. If I told you the case was an action by
8 the United States against the Village's use of an
9 at-large system to elect its board of trustees, does
10 that sound familiar to you?

11 A. I can't say it's correct or incorrect. I
12 would just have to -- have to check back on the file on
13 that to see what it was about.

14 Q. Yeah. Great. I have a copy of that decision
15 here. Let me mark this for the record as Exhibit 3.

16 (Exhibit 3 marked.)

17 Q. (BY MS. SMITH) This is United States of
18 America versus Village of Port Chester. That's a
19 decision issued by the Court at 704 F. Supp. 2d 411 in
20 the Southern District of New York in 2010.

21 A. All right.

22 Q. And I'll just point you to the synopsis of the
23 case, if you want to take a moment to look over it.

24 A. Yeah.

25 Q. Does that help you remember the case? So this

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1 is the United States filing an action against the
2 Village alleging that the at-large system denied the
3 Hispanic population an equal opportunity to participate
4 in the political process and elect representatives of
5 their choice in violation of the Voting Rights Act.

6 A. I can see that, yeah.

7 Q. Great. Let's go to Page 34 of this document.
8 That's going to be Footnote 11 in the middle of the
9 page.

10 A. All right.

11 Q. Do you see that the Court says that you
12 posited that the CVAP data for Port Chester may not be
13 fully accurate because there is some evidence that
14 there's over-reporting of citizenship status by
15 Hispanics in the Census, that is, Hispanic noncitizens
16 will indicate on Census forms that they are, in fact,
17 citizens?

18 A. Yes.

19 Q. Do I have that right?

20 A. Yeah.

21 Q. Okay. And I'll go ahead and mark your expert
22 report submitted in that case for the record.

23 (Exhibit 4 marked.)

24 Q. (BY MS. SMITH) This is Exhibit 4, expert
25 report of Peter Morrison for the case of United States

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1 versus Village of Port Chester, dated May 13th, 2007.

2 A. All right.

3 Q. Do you recognize this document?

4 A. It looks like my report.

5 Q. An expert report you submitted in the Port
6 Chester case --

7 A. Correct.

8 Q. -- in May 2007?

9 Okay. Let's turn to Page 31.

10 A. All right.

11 Q. After "Citizenship Misreporting," you said,
12 quote: A further consideration here is the body of
13 research by Census Bureau staff and others which
14 documents a tendency for noncitizens, particularly
15 recently arrived ones, to misreport themselves as
16 citizens on the Census.

17 Do I have that right?

18 A. Yes.

19 Q. Okay. Moving to the following paragraph, the
20 last sentence, you state: Correcting for citizenship
21 over-reporting in Port Chester is justified here.

22 Do I have that right?

23 A. Yes.

24 Q. So is it your opinion that you offered in this
25 case that experts should correct for over-reporting in a

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1 Census dataset?

2 A. The -- the correction is justified here, first
3 of all, because there were so many Hispanics. Hispanics
4 were a predominant part of the population. And
5 secondly, at that point in time, which is now -- we're
6 talking about 2007, before the 2010 Census had even been
7 taken, which is, you know, a decade old -- at that point
8 in time, there were a lot of concerns about citizenship
9 misreporting. And I believe at that time, I -- when I
10 was working with Mr. Bryan, he said, "You know, the
11 Census Bureau looks at this issue, and they actually
12 have studies -- unpublished studies and unpublished data
13 that we could refer to as suggesting that there may be
14 misreporting at the very local level, such as this
15 village.

16 And that's where I got the information,
17 and it was -- I would characterize it as responsive to a
18 circumstance that occurred at a very local level where
19 there was a considerable concern with misreporting on
20 the part of a very sizable Hispanic population about
21 whom there could be some controversy as to whether or
22 not they were all citizens, as reported on the Census.
23 So that was something I looked into, and that was the
24 basis for bringing that issue up at that point in that
25 particular case.

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1 Q. So would you suggest that experts correct for
2 citizenship over-reporting when evaluating Census data
3 when there is evidence of over-reporting, as you
4 described?

5 A. I would say when there is substantial evidence
6 of over-reporting, it would be worth looking into the
7 feasibility of doing that, but I would not, as a general
8 rule, say it's something that ought to be done. As a
9 general rule, I would say just go with the published
10 Census data because at this point in time, which is now,
11 what, about 15 years -- 15 or 18 years ago, we know a
12 lot more about the Census Bureau's robustness of
13 reporting of citizenship and their efforts to deal with
14 problems such as this, which were problems of concern in
15 2007 but are now well accounted for by the practices
16 that the Census Bureau engages in 15, 18 years later.

17 Q. Okay. And would you agree that
18 disproportionate over-reporting by one group can lead to
19 inaccurate results on a survey?

20 MR. CARDIN: Object to the form.

21 You may answer the question.

22 A. I -- I wouldn't agree with that, no.

23 Q. (BY MS. SMITH) And why not?

24 A. Because I have no evidence that it is
25 something that is of concern and can be corrected. I'm

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1 not -- let me be clear on what I'm saying here. I'm not
2 saying that there is no over-reporting. I'm simply
3 saying that there is no evidence of over-reporting in,
4 I -- I would say, virtually any of the cases I've been
5 involved in since then that would justify saying this is
6 a central concern. I -- I think it's important to
7 understand that everyone recognizes that all data that
8 the Census Bureau deals with have issues concerning
9 reporting. They are not 100.000 percent correct. But
10 the issue of over-reporting of Hispanics -- of Hispanic
11 citizens as a general concern with the Census Bureau is
12 not one that enters into any of the research or any of
13 the studies that I've done in the last 10 years.

14 Q. Okay. I think we can move on to -- I want to
15 talk about another case. Your CV mentions that you
16 worked as an expert for defendants in the case NAACP
17 versus East Ramapo School District; is that right?

18 A. Yes.

19 Q. Okay. And was that a case where --

20 MR. CARDIN: That's Number 18 on the
21 list; is that --

22 MS. SMITH: Oh, sorry.

23 MR. CARDIN: Appendix A.

24 MS. SMITH: Let me go back to Appendix A.
25 I believe that's right, but just give me a moment.

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1 A. Sure. East Ramapo, I think it's pronounced.

2 Q. (BY MS. SMITH) Ramapo. Oh, thank you.

3 A. Yeah.

4 Q. Yes, Number 18. Thank you.

5 A. Right.

6 Q. And you testified at trial in this case?

7 A. Correct.

8 Q. Okay. And was that a case where the NAACP and
9 minority voters sued a school district alleging an
10 at-large system of electing school board members diluted
11 the votes of Black and Latino communities under Section
12 2?

13 A. I'd have to go back and see whether every
14 single word in your sentence is correct, but --

15 Q. Right.

16 A. -- that's generally what I recall about it.

17 Q. Great. Well, let's look at that decision,
18 too. So I can mark for the record -- this is now
19 Exhibit 5.

20 (Exhibit 5 marked.)

21 Q. (BY MS. SMITH) I'm marking for the record
22 National Association for the Advancement of Colored
23 People versus [sic] Spring Valley Branch versus East
24 Ramapo Central School District. That's 462 F. Supp. 3d
25 368, an SDYN decision from 2020. Here you are.

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1 A. Thank you.

2 Q. Okay. If you want to take a moment, we can
3 look at the synopsis. It says: Interest group and
4 minority-registered voters brought an action against a
5 school district alleging that the election system that
6 the school district used to elect members of its board
7 of education resulted in minority vote dilution in
8 violation of the Voting Rights Act.

9 A. Yes.

10 Q. Does that sound right? Okay.

11 Let's turn to Page 12 here. And the page
12 number is at the bottom right. Looking at the top
13 left-hand corner, the end of that first paragraph, I
14 believe the Court noted that you had, quote, advocated
15 for the use of surname and geocoding analysis to derive
16 racial estimates by geographic unit. Do I have that
17 right?

18 A. Yes.

19 Q. And another name for that would be Bayesian
20 Improved Surname Geocoding?

21 A. That's correct.

22 Q. Or BISG?

23 A. Yeah.

24 Q. Okay. Let's turn now to Page 36 of this
25 document, and we're looking at Footnote 33. And here,

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1 the Court said that, quote, a 2017 paper coauthored by
2 Dr. Morrison cited the Imai -- Imai and Khanna article
3 about BISG methodology. Do I have that right?

4 A. Yes.

5 Q. Is that a reference to Dr. Kosuke Imai?

6 A. I -- I -- I don't know if it's the same Imai,
7 but I -- I don't dispute that I said that.

8 Q. Okay. So you cited Dr. Imai --

9 A. Yes.

10 Q. -- in a paper you wrote in 2017?

11 A. Correct.

12 Q. Is Dr. Imai reputable in the field of
13 statistical methods, to your knowledge?

14 A. I -- I don't know anything about the person,
15 the author. I just know that I cited the article in
16 support of the contention that one could assign a
17 race -- and the quote here is "one could assign a race
18 to registrants in a voter file where this quantity is
19 not present and then aggregate" the individuals and then
20 use it as an EI input. And what I said was you could
21 do. I -- I didn't say whether you should do it or
22 whether it would give you an accurate result. I said
23 you could. And I think the intention of my statement
24 there was that there was no reason not to try to do it
25 that way. It was a way to do it that would -- you know,

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1 could be justified --

2 Q. Okay.

3 A. -- based on what I knew about BISG.

4 Q. But you're not offering any conclusions about
5 BISG in this case?

6 A. No, I -- I -- I stand behind BISG as a way of
7 dealing with a very complicated problem if it's properly
8 applied and the caveats are recognized and obeyed. In
9 other words, if you use it correctly, it -- it has been
10 proven to be workable. I had some experience where
11 people have used BISG and they -- they ignore the
12 caveats, and I say it's too bad because they didn't do
13 it right, and they -- you know, they're going to end up
14 with things I don't know whether they're true or not.

15 Q. Okay. But you're not offering opinions about
16 BISG here in this litigation in your --

17 A. No, I -- I -- I would say if somebody has used
18 BISG properly, I -- my opinion would be I stand behind
19 it. I haven't directly studied its application in this
20 case.

21 Q. Understood.

22 A. But if I'm called upon to do it, I will.

23 Q. And Dr. Imai, you testified you don't know
24 about him, but you found his article reputable enough to
25 cite in a paper you wrote; is that right?

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1 A. I'm assuming here that it was a peer-reviewed
2 publication.

3 Q. Uh-huh.

4 A. And if someone has a peer-reviewed
5 publication, I will regard that as meeting the minimum
6 scientific standards that I would want to rely upon.

7 Q. Okay. Thank you. I think we're done with
8 that document. And I'm going to shift gears a little
9 bit. I want to pull up one more document while we --

10 MR. CARDIN: Can we take a break --

11 MS. SMITH: Oh, yeah.

12 MR. CARDIN: -- for a second?

13 MS. SMITH: Of course. We've been going
14 about an hour. We can go off the record. Thank you.

15 (Recess taken from 10:05 to 10:12 a.m.)

16 Q. (BY MS. SMITH) Okay. I want to pull up one
17 more document while we're talking about your past work.

18 MS. SMITH: Okay. I'm going to mark this
19 as Exhibit 6 for the record. It's an op-ed in the LA
20 Times by Dr. Morrison.

21 (Exhibit 6 marked.)

22 Q. (BY MS. SMITH) So do you recognize this
23 document?

24 A. Yeah, I know it's mine. It's 1995.

25 Q. So is this an op-ed you published in 1995?

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1 A. Yes.

2 Q. Okay. And what is it about?

3 A. '95. Let me just read it.

4 Q. Oh, yeah, take a moment.

5 A. Sure.

6 Q. Please.

7 A. Yeah, I think I recall what this is about.

8 Your question?

9 Q. What is -- what is it about?

10 A. It's about the Census Bureau's definitions and
11 distinctions among individual ethnic and racial -- and
12 racial identities and the questions they ask.

13 Q. Great. Okay. And it's also about race-based
14 redistricting?

15 A. Tell me which paragraph you see that in. I --

16 Q. Let's --

17 A. -- didn't read the whole thing.

18 Q. Sure. Let's go to Paragraph 6.

19 A. All right.

20 Q. I believe you said in the third sentence,
21 quote: Membership in a given "minority" group means not
22 exclusion but entitlement.

23 What did you mean?

24 A. I said -- what I said is, "At the same time --

25 Q. "At the same time."

1 A. -- membership" --

2 Q. Oh.

3 A. -- et cetera.

4 Q. Okay. So: At the same time, membership --

5 A. Yeah.

6 Q. -- in a given "minority" group means not
7 exclusion not entitlement?

8 A. And the preceding sentence says: Now the
9 focus is on distinctions that are finer, more numerous
10 and more open to debate. At the same time, membership
11 in a given "minority" group means not exclusion but
12 entitlement.

13 Q. Okay.

14 A. "The stakes remain as always: privilege and
15 resources, including political empowerment."

16 Q. Okay. And when you said "membership in a
17 given 'minority' group means not exclusion but
18 entitlement," specifically, what did -- what did you
19 mean by that?

20 A. Entitlement to equal opportunity to vote --

21 Q. Okay.

22 A. -- at this particular point in our history,
23 which is 1995, which I would say it is a -- a comment on
24 the state of affairs in 1995, which would be, at this
25 point, what, close to three -- three decades ago.

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1 Q. Sure.

2 A. So it's -- it's -- I -- I would regard this as
3 a commentary -- an opinion piece commenting on the state
4 of affairs three decades ago in the United States with
5 regard to race and entitlement.

6 Q. Okay. And then in the next paragraph, you
7 said, quote: A highly controversial aspect of
8 ethnically based districting is its reinforcement of
9 ethnic separatism.

10 Do you see that?

11 A. Yes.

12 Q. And what did you mean by that?

13 A. Just what I said. It's highly controversial.

14 Q. Okay. Would providing Black-opportunity
15 districts lead to, quote, reinforcement of ethnic
16 separatism, in your view?

17 MR. CARDIN: Object to the form.

18 You may answer the question.

19 A. I don't have an opinion on that.

20 Q. (BY MS. SMITH) Okay. One more thing on your
21 background. Looking at your CV, I see you filed a brief
22 in support of the appellants in the case Evenwel v.
23 Abbott. Is that right?

24 A. Yes.

25 Q. And Dr. Swan- -- David Swanson joined that

1 brief with you?

2 A. Yes.

3 Q. Is he another demographer you've worked with?

4 A. Yes, he is.

5 Q. Have you discussed this case with Dr. Swanson?

6 A. I -- I don't know that I've discussed this
7 case in particular with him. I have discussed the work
8 that he has been doing on another case, and I -- I can't
9 rule out the possibility that our discussion also
10 include -- included some mention of this case. I'm
11 trying to think back. I did not discuss the case itself
12 with him. I may have discussed data with him that
13 included Mississippi as well as other states.

14 Q. Okay. Did any of those discussions affect
15 your conclusions in this October 2023 report?

16 A. No, we -- they -- I haven't discussed this
17 case with him, as best as I can recall.

18 Q. Okay. Great. And going back to the Evenwel
19 v. Abbott case, what is your understanding of the
20 appellants' argument in that case?

21 A. Again, I -- I really don't recall the details
22 of what the appellants' argument was. What I recall is
23 simply that a group of demographers had something to say
24 collectively about what was going on, and that's --
25 that's the -- you know, I'd have to review the whole

1 thing to see what it was about again.

2 Q. Okay. And if I had told you that the
3 appellants were arguing that the equal protection clause
4 requires districting take into account the total number
5 of people eligible to vote as opposed to the total
6 population, would that sound right? Does that sound
7 familiar?

8 A. I'm not sure what the distinction between the
9 total number of people and the total population. To me,
10 that sounds synonymous.

11 Q. Oh, sorry. The total number of eligible
12 people to vote --

13 A. Oh, eligible.

14 Q. -- as opposed to the total population, which
15 would include, say, not citizens?

16 A. I honestly don't recall where that distinction
17 entered in. I mean, I'd have to review the whole thing.
18 I -- it may have entered in. And what was your question
19 about that?

20 Q. Just if that sounded familiar to you as to
21 what the appellants argued in that case.

22 A. I can't say that it sounds familiar because I
23 don't recall what -- what they were arguing. I only
24 recall what we said.

25 Q. Okay. What -- and did you say, to the best of

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1 your recollection?

2 A. Again, I'd have to -- I'd have to look at the
3 document to tell you what we said.

4 Q. Okay. So why did you file a brief on behalf
5 of the appellants in that case?

6 A. I think the -- the -- the simple answer to
7 your question was that I felt honored to be called upon
8 to gather together several of the most qualified applied
9 demographers from several different disciplines to agree
10 on what we had to say about a set of -- a subset of the
11 issues in that case and someone who was willing to pay
12 us to do so. And I said, "If you'd like us to -- to put
13 together what we think of as our consensus opinion, it's
14 a big favor to ask to do it for free, but if you'd like
15 for us to do it, we'll do it."

16 Q. Okay. Do you have a view on whether decennial
17 redistricting should be done on the basis of number of
18 people who are eligible to vote as opposed to the total
19 population?

20 MR. CARDIN: Object to the form.

21 But you may answer the question.

22 A. Yeah, I -- I don't have an opinion on it. I
23 acknowledge that it is important both to the eligible
24 voter population and to the total population because it
25 gets at everyone who is represented, which is the total

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1 population, and those among the persons represented who
2 are entitled to cast a ballot.

3 Q. (BY MS. SMITH) So just to be sure I'm clear,
4 do you think decennial redistricting should be done on
5 the basis of number of people eligible to vote?

6 MR. CARDIN: Object to the form.

7 You may answer the question.

8 A. You're saying do I think it -- it should be
9 done based on the -- state the question again.

10 Q. (BY MS. SMITH) Do you think that decennial
11 redistricting should use data that looks at
12 voting-eligible people and not the total population?

13 MR. CARDIN: Object to the form.

14 You may answer the question.

15 A. I think it should be -- reflect both
16 populations.

17 Q. (BY MS. SMITH) And is that the view of -- how
18 would it do that? Yeah.

19 A. Operationally? You mean -- I -- you --

20 Q. Sure. How would that work?

21 A. It would -- it would work by eligible voters
22 electing people who represent the total populations of
23 which the eligible voters are a part.

24 Q. Okay. So when drawing district maps and
25 accounting for the one-person-one-vote principle,

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1 would -- would states be using the number of
2 voting-eligible people or the total population?

3 MR. CARDIN: Object to the form.

4 You may answer the question.

5 A. It's not an either/or situation. It is a
6 conceptual distinction, and I -- I can't answer the
7 question because it's -- it's not one or the other.
8 It's not -- it's not an either/or.

9 Q. (BY MS. SMITH) Do you understand that the
10 appellants were arguing for -- for one of those options
11 and not a hybrid approach in that case?

12 A. I can't say that I'm clear on what they were
13 arguing.

14 Q. Okay. So you submitted --

15 A. I'm just saying I'm clear on --

16 Q. It's your testimony that you submitted the
17 amicus brief in that case, but you didn't know what they
18 were arguing?

19 A. I did know at the time, but I'm saying I don't
20 know at this time.

21 Q. Okay.

22 A. I don't clearly recall at this time.

23 Q. All right. We talked a little bit earlier
24 about how you worked a fair amount with Thomas Bryan; is
25 that right?

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1 A. Yes.

2 Q. Okay. Have you ever worked with
3 BryanGeoDemographics, his firm?

4 A. Yes. I mean, when I say I worked with Thomas
5 Bryan, he regards it as working with him --

6 Q. Okay.

7 A. -- and his firm.

8 Q. Okay. I think that concludes your background.
9 Let's -- let's turn to your report again. That's
10 Exhibit 2, in terms of its location in the record.
11 Although, here's what it looks like. So I believe you
12 already have it. Yeah. That first one.

13 A. Oh, okay. Sorry.

14 Q. No, you're fine.

15 A. All right.

16 Q. Okay. So looking at Page 2 to the first page
17 of the report, I see you were asked to opine on the
18 level of political participation of Black eligible
19 voters in Mississippi relative to White voters. Is that
20 right?

21 A. To White eligible voters.

22 Q. White eligible voters?

23 A. Right.

24 Q. And to evaluate political participation, you
25 considered the percentage of people who were registered

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1 and then also the percentage of people who turned out to
2 vote?

3 A. Correct.

4 Q. Great. And what methods did you use in your
5 analysis?

6 A. I tabulated and displayed the data on the
7 number of people who were eligible to vote and the
8 number who turned out to vote.

9 Q. Okay. And you relied on the CPS, as you said
10 earlier. And what did you conclude in your report? I
11 believe it's listed on Page -- still on Page 2, at
12 Paragraph 3.

13 A. Well, I concluded that based on a 42-year-time
14 series of data that is unique to this source of -- to
15 this data source from the Census Bureau, that there is a
16 distinct break that occurred in the historical pattern
17 of political participation by Mississippi voters, and I
18 noted that the distinction -- that -- that the way the
19 break evidenced itself was comparing a period from 1980
20 through 2002 with a period from 2004 onward, where in
21 the latter case, the pattern had reversed and that Black
22 political participation which had trailed that of Whites
23 now exceeded that of Whites in most years, and that it
24 was an authentic break that could be documented only by
25 a scientifically collected source of data over a period

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1 of this length.

2 Q. Understood. And you concluded that, quote,
3 irrespective of any apparent over-reporting of
4 registration or turnout on the CPS?

5 A. Did I say that?

6 Q. Yes.

7 A. Yeah, I -- I agree with that --

8 Q. Great.

9 A. -- that that's what I said.

10 Q. Okay. And then in the next paragraph, you
11 said: Based upon the entirety of these data and other
12 research.

13 Just to make sure I understand, what is
14 "other research" referring to here?

15 A. I have followed the political participation of
16 Black voters in Mississippi in more than one instance,
17 and I have taken note in another study that I did that
18 Blacks are a disproportionately high percentage of all
19 locally elected officials in Mississippi in recent
20 years. And I regard that as -- as a noteworthy
21 observation for just the changes that have occurred over
22 the decades in Blacks' political participation from an
23 earlier period of time to what is now a period of time
24 that I can document from 2004 onward.

25 Q. Okay. But you're not offering any opinions as

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1 to the level of Black representation in political office
2 in Mississippi, number of people who've been elected and
3 their race?

4 A. I'm simply saying that the pattern that I
5 observed of Black versus White participation evidences
6 itself since 2004 in Black participation being certainly
7 equal to if not greater than that of Whites. I don't
8 know that it's greater for sure, but it looks greater in
9 the graphs, and it certainly establishes without any
10 doubt that participation is equal, if not greater, among
11 Blacks relative to Whites in terms of both registration
12 and turnout.

13 Q. Okay. Let's talk more about the Current
14 Population Survey. So what -- what is the CPS?

15 A. The CPS is, first and foremost, a long
16 established scientific survey conducted by the Census
17 Bureau for, I think, 42 years now, if not more, as a
18 scientifically conducted survey. It is uniquely
19 informative relative to administrative by-product data,
20 which most political scientists are using to evaluate
21 elections in a particular year or at a particular point
22 in time or in a particular place --

23 Q. Uh-huh.

24 A. -- or state but are always time-specific,
25 place-specific as opposed to a continuous regular

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1 reading of what's going on every two years over a
2 42-year period.

3 Q. Okay. In terms of how the survey data is
4 collected, is it accurate to say that the Census
5 Bureau -- and correct me if I have this wrong -- selects
6 a random group of respondents and then asks them a
7 series of questions?

8 A. I don't know if the word "random" is strictly
9 correct in a statistical sense, but it is
10 representative. I would say "representative" would be
11 the proper word to use in that sentence.

12 Q. Understood. So they select a representative
13 group of respondents and then ask them a series of
14 questions?

15 A. That's a conceptual overview. I don't know if
16 that's exactly how they define it, but I wouldn't
17 dispute that.

18 Q. Okay. And generally speaking, the group of
19 respondents who answer on the CPS would never be
20 perfectly representative of the population of eligible
21 voters, correct?

22 MR. CARDIN: Object to the form.

23 You may answer the question.

24 A. I don't have any basis for saying that that's
25 true, nor do I have any basis for saying it's false.

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1 Q. (BY MS. SMITH) Okay. If I use the term
2 "weighting," do you understand what that means?

3 A. I do.

4 Q. Okay. So does the CPS use weighting?

5 A. I would have to check on the technical
6 details. If they do use weighting, it's because it was
7 necessary. If they didn't use weighting, it's because
8 it wasn't warranted.

9 Q. Okay.

10 A. But they're the arbiters of whether weighting
11 is used.

12 Q. Okay. So to sum up, in a -- in a survey like
13 the CPS, where the group of respondents who answer may
14 not be representative of the population, weights might
15 be used to account for that?

16 MR. CARDIN: Object to the form.

17 You may answer.

18 A. Yeah, I -- I can't answer the question as you
19 framed it.

20 Q. (BY MS. SMITH) Okay. Is using weights common
21 with a survey like this?

22 A. Yes.

23 Q. Okay. But you don't know if the CPS uses
24 weighting?

25 A. I -- I -- I count on the Census Bureau to use

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1 weighting where it's warranted to get data that are
2 representative of the population.

3 Q. Okay.

4 A. That's what weighting is used for.

5 Q. Understood. And so the CPS data that you're
6 reporting is an estimate of registration and an estimate
7 of turnout. Do I have that right?

8 A. Correct.

9 Q. What does it mean that it's an estimate?

10 A. In -- in this instance, with the scientific
11 survey, it means that each number or percentage that is
12 shown has a margin of error, a statistical margin of
13 error that is known and is specified by the Census
14 Bureau.

15 Q. And what is a margin of error?

16 A. It is a -- it was -- it is a band within which
17 a number lies that is published as the point estimate,
18 and it allows one to draw conclusions with scientific
19 certainty about what the true number would be if you had
20 counted every single person in the population rather
21 than the representative sample.

22 Q. And how is a margin of error calculated?

23 A. It is typically a -- a statement that says the
24 number you have is X.XX and you can know with 95 percent
25 certainty statistically that the true value of X.XX is

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1 either a higher limit or -- is -- is higher -- as
2 high as a higher limit or as low as a lower limit. So
3 it allows one to -- such as myself, to make a statement
4 that I have scientific certainty at the 95 percent
5 confidence level that the number is between X and Y.

6 Q. Okay. So the margin of error is what allows
7 an expert such as yourself to -- to report with
8 scientific certainty what the result -- or the estimate
9 of a survey is?

10 A. Correct.

11 Q. Okay. Is 90 percent certainty an acceptable
12 level of certainty?

13 MR. CARDIN: Object to form.

14 You may answer the question.

15 A. It certainly is acceptable, yes.

16 Q. (BY MS. SMITH) And in terms of how margins of
17 error are calculated, is it based on factors such as the
18 size of the sample or the weighting that the CPS does?

19 A. It's based on both.

20 Q. Both? Thank you. Just to make sure I
21 understand, when evaluating a survey, I can take the
22 point estimate plus the margin of error, top of a range,
23 the point estimate minus the margin of error, is the
24 bottom, and that gives me an interval, right?

25 A. Correct.

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1 Q. And given, say, 90 percent confidence level,
2 that interval means 90 percent of the time the survey is
3 run, the actual number will fall within that interval?

4 A. That's one way of putting it, yes.

5 Q. Okay. What would be another way of putting
6 it?

7 A. How much confidence --

8 Q. How --

9 A. I'm 90 percent confident that it falls within
10 this range. So any statement that is based on this
11 number or a time series of these numbers, I have
12 90 percent confidence in the number that I have used to
13 draw my conclusion is a number that I can believe.

14 Q. Okay. So if we know the margin of error and
15 the confidence level, we know how much the estimate CPS
16 reports might differ from the actual result; is that
17 right?

18 A. When you say "the actual result," you mean
19 the --

20 Q. Actual level.

21 A. The actual level, yeah.

22 Q. Great. Is the margin of error something
23 you -- you typically want to know when you're analyzing
24 survey results?

25 A. Yes.

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1 Q. What about the confidence level?

2 A. Well, the confidence level derives from the
3 margin of error.

4 Q. Okay.

5 A. And how I use the data, it is a guide to how
6 one should interpret the data.

7 Q. So, in other words, the margin of error might
8 guide the scientific -- scientific interpretation of the
9 point estimate?

10 A. In this case, it guides the interpretation of
11 each point estimate and the trend shown by the
12 collection of point estimates over a 40- or 42-year
13 period.

14 Q. The margin of error governs that?

15 A. That's correct.

16 Q. Okay. And looking into margins of error would
17 be a typical practice of a demographer?

18 A. It would be -- when you say "a typical
19 practice," it would be something that I would take into
20 account, yes.

21 Q. Okay. Okay. So applying that -- and you
22 would typically take that into account, you said?

23 A. In this case, I take it into account.

24 Q. So let's apply that principle to the CPS
25 estimates. So lower bound of an estimate would be CPS

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1 estimate minus the margin of error. Upper bound would
2 be CPS estimate plus the margin of error. So the actual
3 turnout or actual registration we can be confident falls
4 within the lower --

5 A. Correct.

6 Q. -- and upper bound?

7 A little more on the CPS. So the CPS
8 includes a voting and registration supplement; is that
9 right?

10 A. I'm not sure what you mean about a "voting and
11 registration supplement." The -- I'm -- I'm saying that
12 the data that I have here derived from the Current
13 Population Survey annual data, and I -- it is assessed
14 at the website --

15 Q. Uh-huh. Okay.

16 A. -- under Table 1 in my report.

17 Q. So there's a set of questions they ask about
18 voting and registration when they conduct the survey?

19 A. Yes, there are a set of questions.

20 Q. Okay. And turning back to Paragraph 2, where
21 we just were in your report, you say that the CPS -- one
22 second -- oh, yeah -- the CPS enables you to compare
23 the, quote, self-reported political participation of
24 Black and White Mississippi voters?

25 A. Correct.

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1 Q. So we're going to talk a little bit about
2 over-reporting today. In this context, would you agree
3 with me that over-reporting means the phenomenon where
4 some survey respondents say they are registered or that
5 they voted even though they did not register -- or they
6 are not registered or they did not vote?

7 A. That's what the term means, yes.

8 Q. All right. And have you worked with data from
9 the CPS on voting and registration previously in your --
10 in your work as an expert?

11 A. I'm sure I have in a number of different
12 instances, but not in the way I've used it here as a
13 long-time series, not -- not in a historical approach,
14 but simply a snapshot of what -- what the world is
15 today.

16 Q. Understood. Have you written any publications
17 about the CPS voting supplement -- or -- sorry -- the
18 CPS as a measure of voting and -- and registration?

19 A. I -- I really can't answer the question
20 because it's like saying have you used this particular
21 kind of Census data? And I'm -- I'm sure I've used it
22 somewhere. In -- in a published paper? I don't know.
23 I -- I know I've used it. I -- I regularly use it.

24 Q. So you regularly use --

25 A. Yeah.

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1 Q. -- the CPS in your work?

2 A. Yeah. I rely on it, yes.

3 Q. Okay. All right. So in terms of how the CPS
4 survey is conducted, do Census Bureau representatives
5 call people and interview them over the phone?

6 A. I would have to check the details of how they
7 conduct this. What I do know and what gives me
8 confidence in the CPS is that the Census Bureau is the
9 recognized source of scientifically collected data for
10 the nation that is relied upon by the government and
11 policymakers in the formulation of laws, and it is the
12 only source that one would go to for data of this kind
13 over a period of time. It is -- it is more a matter of
14 confidence that one has in the Census Bureau as
15 producing the best quality scientific data that can be
16 had about a phenomenon.

17 Q. Okay. So to go back to how the survey is
18 conducted, I'm going to mark an exhibit. I'll represent
19 to you I went to the Census website linked in your
20 report, and I looked up the methodology and I downloaded
21 it for us to look at. So this is going to be Exhibit 7
22 in the record.

23 (Exhibit 7 marked.)

24 Q. (BY MS. SMITH) Here you are. So I'm looking
25 here at the second paragraph on the first page, and it

Page 80

1 says that the questionnaire is, quote, administered by
2 Census Bureau field representatives around the
3 country -- or -- sorry -- across the country through
4 both personal and telephone interviews. Do I have that
5 right?

6 A. You say the second paragraph?

7 Q. Yeah. So --

8 A. I've got the second paragraph says: The CPS
9 questionnaire is a completely computerized --

10 Q. "Document that is administered by" --

11 A. Oh, I'm sorry. Yeah. Okay. I get you.
12 Okay.

13 Q. So it's a computerized document -- thank
14 you --

15 A. Yeah.

16 Q. -- for correcting me -- that Census Bureau --

17 A. Correct.

18 Q. -- field representatives around the country
19 look at as they conduct personal and telephone --

20 A. Right.

21 Q. -- interviews. So as I read this, it says
22 that they're doing the survey through telephone
23 interviews and through personal interviewing. Do I have
24 that right?

25 A. Yes.

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1 Q. Okay. And for the Census -- the CPS' voting
2 and registration data that you use, does anyone go back
3 and check to see if people reporting that they
4 registered or reporting that they voted actually
5 registered or actually voted?

6 A. Does the Census Bureau say anything about that
7 in this?

8 Q. No. I think we're done with this document for
9 now.

10 A. Okay. I -- I --

11 Q. Just generally speaking.

12 A. I -- I don't know if they do or not. I
13 would -- I -- I suspect if I called up the people who
14 collected this, I could get the answer. But if this is
15 not part of their stated methodology, I can't answer
16 whether they do or not.

17 Q. Okay. So you don't know whether they go back
18 and check what people said in their responses against
19 their, say, official records of a state?

20 A. I know -- I know that their -- their -- their
21 usual practice is to evaluate the method that they're
22 using. So I -- I can't say that they state this
23 explicitly, but I know that their reputation is they
24 don't do this for 40 years and never check to see
25 with -- periodically on their own whether they are

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1 meeting their own scientific quality-control standards.

2 Q. Uh-huh.

3 A. I'm sure that -- I'm sure that this is not a
4 question that has been ignored by the Census Bureau.
5 That's what their reputation is.

6 Q. Sure.

7 A. So --

8 Q. So just as a --

9 A. -- I -- I don't have any direct analogy of it.
10 I can't answer your question.

11 Q. Just -- just to make sure I understand the
12 data you're relying on, it's based on survey answers,
13 right?

14 A. That's correct, self-reports. And the
15 implicit assumption that any researcher, such as myself,
16 makes is that after 40 years of doing it this way, the
17 Census Bureau knows what it's doing to elicit this, and
18 the accuracy of the reports are sufficiently accurate
19 for people like me to use it.

20 Q. Uh-huh.

21 A. Otherwise, they wouldn't publish it. They
22 would say, "We tried to collect the data, and we
23 couldn't get it."

24 Q. Yeah, I think what I'm trying to get at,
25 taking aside the general gradeability of the survey, if

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1 I answer the survey and I say, "I registered to vote,"
2 for example, do you know if the Census Bureau goes and
3 checks if I actually am in my state's registration
4 system?

5 A. I don't know for sure, but I can't rule out
6 the possibility that they might randomly check something
7 like that.

8 Q. Uh-huh.

9 A. But they don't publish -- they don't publish
10 all the details of what they do. It would not surprise
11 me if they did do that on some of the records just to
12 assure the quality of the data.

13 Q. Okay. So in your review of the CPS and your
14 use of this data in the past, you're not aware of -- of
15 that practice?

16 A. I am aware of their practices, which,
17 generally speaking, are they don't publish data if it
18 turns out that they're getting garbage in that is not
19 anywhere near what they're representing it to be.

20 Q. Uh-huh.

21 A. I -- I would be astonished if they had not at
22 all or were not continuously monitoring the accuracy of
23 this. That's their normal practice.

24 Q. Uh-huh. And to your -- I believe you said
25 earlier you -- you think they might on occasion, but

1 not -- but haven't publicly reported that they conduct
2 that kind of validation of a survey result?

3 MR. CARDIN: Object to the form.

4 You may answer the question.

5 A. What I'm saying is the Census Bureau is known
6 for validating their data-collection methods, and they
7 continuously improve them. And so I have confidence in
8 this particular body of data first and foremost because
9 of the Census Bureau's reputation and, secondly, because
10 of the 40 years of experience that they've had in
11 dealing with an obvious quality-control question, which
12 is: Are people responding?

13 Q. (BY MS. SMITH) Uh-huh.

14 A. If -- if it were a new survey and this was the
15 first year, I would say, well, they may not have looked
16 at that yet.

17 Q. Uh-huh.

18 A. But after 40 years, I'm quite confident that
19 they -- that they know what they're doing. And if there
20 were insurmountable problems, they would say, "We've
21 tried to gather this information, but we can't." And
22 there are instances where information, they tried to
23 gather it and they couldn't, and they say so.

24 Q. Okay. So to make sure I understand, you're
25 not aware of whether the CPS is a validated survey or

1 not?

2 MR. CARDIN: Object to the form.

3 You may answer.

4 A. I -- I wouldn't agree with that. I -- I am
5 aware.

6 Q. (BY MS. SMITH) Okay. And which -- which one
7 is it?

8 A. I would say that it is -- it is a validated
9 form of collecting data because if they couldn't
10 validate it, they wouldn't -- would not be publishing it
11 for 40 years.

12 Q. All right. So you -- you -- okay. Yeah, so
13 the dataset that you used, does it reflect validation
14 from any state's administrative records or another
15 source?

16 A. I don't know the details of how the Census
17 Bureau validates its numbers, but I'm sure that they do
18 validate them.

19 Q. Okay. So you testified a little earlier that
20 the CPS has known limitations as a survey. What are
21 those?

22 A. The confidence intervals.

23 Q. Okay. Any other flaws or limitations?

24 A. Not that -- not that I know of.

25 Q. So let's turn -- okay. I want to turn to

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1 another exhibit, which is a frequently asked questions
2 document that the CPS publishes.

3 (Exhibit 8 marked.)

4 Q. (BY MS. SMITH) I'm marking for Exhibit 8 in
5 the record a document that I'll represent to you I
6 pulled from the Census Bureau's website, and it's called
7 "Frequently Asked Questions, or FAQs, About Voting and
8 Registration." All right?

9 A. Uh-huh.

10 Q. Great. Okay. So I want to talk a little bit
11 more about how the CPS describes its own limitations in
12 this document. All right?

13 A. All right.

14 Q. Turning to Page -- the second page, so turning
15 over the document, do you see here that it says, quote,
16 Why might the Census Bureau's voting and registration
17 estimates differ from other data sources?

18 A. Yes, I do.

19 Q. Okay. And so the Census Bureau is saying
20 here, essentially, that the voting and registration
21 estimates might differ from other data sources?

22 A. Yes.

23 Q. Okay. And then looking at the first sentence
24 below that, it references that one of those other data
25 sources that the CPS might differ from would be the

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1 official counts in an election?

2 A. Can you tell me what sentence -- what the
3 words are in the sentence that --

4 Q. Oh, yeah, of course. So, "Differences between
5 the official" --

6 A. Yeah.

7 Q. -- "counts and the CPS" --

8 A. Right. Yeah, "may -- may be a combination of
9 an understatement of the official numbers and an
10 overstatement of the CPS estimates."

11 Q. Yes.

12 A. Sure, I -- I see that.

13 Q. So do you dispute that the CPS might differ
14 from official counts reflected in a state's records?

15 A. No, I do not dispute that.

16 Q. Okay. Okay.

17 A. With the caveat that the state's records are
18 administrative record data.

19 Q. Uh-huh. Sure. So moving a little bit down in
20 that paragraph, I also see the quote: Respondent
21 misreporting is also a source of error in the CPS
22 estimates.

23 Do I have that right?

24 A. Yes.

25 Q. So do you dispute that respondent misreporting

Page 88

1 is a source of error in the CPS estimates?

2 A. No, I don't.

3 Q. Okay. Do you dispute the CPS' own description
4 of the limits of its data?

5 A. No, I don't.

6 Q. All right. Why don't we take a quick break
7 now because I'm about to shift gears. So we're coming
8 to a natural stopping point.

9 A. Sure.

10 Q. Thank you.

11 MS. SMITH: Going off the record.

12 (Recess taken from 10:53 to 11:03 a.m.)

13 Q. (BY MS. SMITH) All right. Dr. Morrison, just
14 before a break, I asked if you dispute the CPS' own
15 views of the limits of its data, and you said you did
16 not. Do I have that right?

17 A. Correct.

18 Q. Okay. Thank you. So I want to turn back to
19 your report, looking at Table 1 now. So I'm on Page 3
20 of your report.

21 A. Yes.

22 Q. Okay. So let's look at -- I just want to walk
23 through this table and make sure I'm understanding it
24 right. So looking at 2020, you looked at -- here,
25 you're reporting the Census CPS survey data, and you're

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1 reporting that as one example, in 2020, according to the
2 CPS, Black voter turnout in Mississippi was estimated at
3 72.9 percent. Do I have that right?

4 A. Yes.

5 Q. And White voter turnout was estimated at
6 69.8 percent?

7 A. That's correct.

8 Q. For a 3.1 percent difference?

9 A. Correct.

10 Q. Okay. I'll represent to you I went to the
11 link here at the bottom of your Table 1, and I pulled
12 some more CPS -- or the same CPS data in a different
13 table. So let's mark that Exhibit 9 for the record.

14 (Exhibit 9 marked.)

15 Q. (BY MS. SMITH) And this is Table 4A, which is
16 called "Reported Voting and Registration For States."
17 Okay?

18 A. Uh-huh.

19 Q. Great. So this is data from the CPS voting
20 and registration supplement, which is the same dataset
21 you relied on for Tables 1 and 2. Okay?

22 A. Let me make sure that the sources agree.

23 Q. Sure. Take your time. If you want to look at
24 the second page, it says the source there at the bottom.

25 A. Okay. Okay. All right.

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1 Q. So what I'm going to try to do next is
2 understand how many people the CPS estimate would lead
3 us to think voted in Mississippi in 2020. Okay?

4 A. All right.

5 Q. And if you're like me, you don't like doing
6 math in your head, potentially, so I did a few basic
7 calculations to just understand what's reported here.
8 And I'll -- I have a calculator for you. If you want to
9 double-check --

10 A. Okay. All right.

11 Q. -- my math, you have that. Okay?

12 A. Before I proceed with this, can I --

13 Q. Take a moment? Oh, yeah.

14 A. No. What I'm just wondering is I may want to
15 do a calculation and write it down on a napkin --

16 Q. Sure.

17 A. -- or a piece of paper, if you --

18 Q. We can get you paper.

19 A. I'm sure if I put it on a piece of paper --

20 MR. CARDIN: Let me hand you a piece of
21 paper.

22 THE WITNESS: Yeah, yeah, give me a piece
23 of paper.

24 A. Okay. I'm all set.

25 Q. (BY MS. SMITH) Great.

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1 A. Just so you know, I'm going to follow your
2 calculation -- your -- your --

3 Q. Yes.

4 A. Yeah. Okay.

5 Q. By all means.

6 A. All right. So the -- we're talking about
7 2020.

8 Q. Yes. So let's look at Mississippi, an entry
9 here on the first page.

10 A. Uh-huh.

11 Q. Moving all the way over to -- under "Voted" --

12 A. Right.

13 Q. -- "Percent Voted (Citizen)" being the column.

14 A. Uh-huh.

15 Q. And for Mississippi, I'm seeing 70.3 percent
16 of the citizen voting age population voted in 2020.

17 A. Where -- where do you see that number?

18 Q. I'm seeing 70.3 when I look under "Voted" at
19 the top. "Percent Voted (Citizen)" at the next line
20 from the top. And then when I go to Mississippi --

21 A. Oh, I see. I get you. Okay.

22 Q. -- I see 70.3.

23 A. 70.3, yeah.

24 Q. So that's the CPS estimate.

25 A. The percent of citizens voting, right.

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1 Q. Yes. That's the percent of citizens voting in
2 2020. Are we on the same page?

3 A. Yeah.

4 Q. Great.

5 A. I see what you're looking at.

6 Q. Okay. Perfect. And like I said, I want to
7 calculate how many people actually voted -- or --
8 sorry -- how many people voted in 2020 as the CPS would
9 have us estimate it in Mississippi.

10 A. All right.

11 Q. So are you familiar with the -- you mentioned
12 earlier the American Community Survey issued by the
13 Census.

14 A. Yes.

15 Q. And are you aware that it contains data on
16 citizen voting age population --

17 A. Yes.

18 Q. -- across jurisdictions?

19 Okay. So I'll represent to you that using
20 the ACS, that Mississippi's citizen voting age
21 population --

22 A. Uh-huh.

23 Q. -- is 2.227795 million.

24 A. All right.

25 Q. All right. Great.

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1 A. That's the ACS CVAP estimate, 2,227,795. And
2 do you have a margin of error for them, also? Because
3 that's the --

4 Q. Yes, I do. Sorry. I don't have it for that
5 number.

6 A. Oh, be- -- I mean, that -- that's their point
7 estimate. I need the margin of error.

8 Q. That's their point estimate?

9 A. Yeah. Right.

10 Q. I believe we can find you the margin of error,
11 if that's helpful. I wasn't planning to walk through
12 the margin of error for that calculation, but I'm
13 happy --

14 A. Yeah.

15 Q. -- to find it. Maybe we could go off the
16 record just for a moment so I could pull it up, if
17 that's all right.

18 (Recess taken from 11:09 to 11:10 a.m.)

19 Q. (BY MS. SMITH) Okay. Thanks for your
20 patience just now. So the margin of error is plus or
21 minus 3,481.

22 MR. CARDIN: And could you identify just
23 the source that you are -- obtained that information
24 from?

25 MS. SMITH: Yeah. Data.census.gov. The

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1 citizen voting age population by selected
2 characteristics, the American Community Survey filtered
3 by Mississippi, filtered by citizens years 18 -- 18
4 years of age and over. And this is the 2017 to 2021
5 tabulation.

6 A. Okay. Okay. That's important.

7 Q. (BY MS. SMITH) Okay.

8 MR. CARDIN: And you have accessed that
9 on your laptop, correct?

10 MS. SMITH: Yes. I'm happy to try to
11 print it out or anything, if that's helpful.

12 MR. CARDIN: No, I just want the record
13 to reflect the source and how you got it --

14 MS. SMITH: Understood. Yes.

15 MR. CARDIN: -- just so it's clear.

16 Q. (BY MS. SMITH) Are we all clear now?

17 A. Yeah.

18 Q. Great. Okay. So in order to find number of
19 people who voted in Mississippi in 2020 according to the
20 CPS, I'm going to multiply .703 times 2,227,795. Does
21 that sound right?

22 A. I understand -- yeah, I understand exactly
23 what you've done.

24 Q. Great. And when I ran that, I found
25 1.57 million people to have voted in Mississippi in 2020

1 according to --

2 A. 1.57 million?

3 Q. Yes.

4 A. Okay. And do you want me to comment on that
5 comparison?

6 Q. I don't think we need --

7 A. Do you have a question about it?

8 Q. -- a comparison. I'm just -- I'm asking: Do
9 you dispute that 70.3 percent of 2,227,795 is about
10 1.57 million?

11 A. I -- I -- if -- if you did the calculation
12 correct, I don't dispute that it's 1.57 million. I'm
13 just asking what is it that you don't understand about
14 the 1.57 million?

15 Q. Oh, no, I'm just -- I'm trying to -- okay. So
16 to sum all that up, the CPS estimate of how many people
17 voted in 2020 in Mississippi would be 1.57 million
18 people?

19 A. I think you've done the calculation correct.

20 Q. Great. Okay. Understood. So we can mark the
21 next exhibit, which would be official data from the
22 Secretary of State's office from 2020. This is their
23 report of official results.

24 (Exhibit 10 marked.)

25 Q. (BY MS. SMITH) Okay. So this is the official

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1 results of total votes reported by counties for the 2020
2 general election as offered by the Secretary of State.

3 Okay?

4 A. Uh-huh.

5 Q. Okay. So I want to turn to Page 9. And here,
6 we can see the total number of votes cast for each of
7 the presidential candidates. Are -- do you see that?

8 A. Yeah.

9 Q. Okay. So I'll represent to you I also
10 calculated -- I added up all of these numbers to get a
11 total number of votes that were actually cast in
12 Mississippi in 2020. Okay?

13 A. Votes cast in Mississippi.

14 Q. In 2020.

15 A. In 2020.

16 Q. Uh-huh. And I did that by adding up all of
17 the numbers here.

18 A. And the source of this is the Statewide
19 Election Management System?

20 Q. The source is the Secretary of State's
21 Statewide Election Management System.

22 A. Secretary of State of Mississippi.

23 Q. Yes. Thank you.

24 A. All right.

25 Q. All right. And I added those up to be 1.31 --

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1 3 -- sorry -- 1,000 -- sorry -- 1,300,000 -- 313,759 was
2 the number I got when I added those up.

3 A. All right.

4 Q. Okay. So 1.313759 million.

5 A. Uh-huh.

6 Q. So as I read it, the Mississippi Secretary of
7 State's office reports that that's the number of votes
8 that were actually cast --

9 A. Right.

10 Q. -- in 2020. Okay?

11 A. Yeah.

12 Q. Do you dispute the calculation I just gave
13 you?

14 A. I'll take your word for doing the calculation
15 correctly. And I just want to reiterate that you have
16 the votes cast as sourced from the Secretary of State in
17 Mississippi.

18 Q. Uh-huh.

19 A. You had the ACS CVAP five-year estimate as --
20 accessed for the period 2017 to '21.

21 Q. Uh-huh.

22 A. And then you started out mentioning my
23 calculation of -- my -- my percentage showing
24 70.3 percent --

25 Q. Uh-huh.

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1 A. -- of 2177 --

2 Q. Uh-huh.

3 A. -- equals 1530. Those are the numbers you've
4 given me.

5 Q. Yeah. So just to sum up there, when I ran the
6 calculation of the CPS estimate of voter turnout in
7 Mississippi, we got 1.57 million, about. And here, the
8 Mississippi Secretary of State's office is reporting
9 about 1.31 million.

10 A. Yes.

11 Q. Is that right?

12 Okay. So comparing the 1.31 million votes
13 reported by the Mississippi Secretary of State's office
14 with the 1.57 million votes estimated by the CPS, the
15 CPS' report is about 250,000 votes over the actual
16 results reported by the State?

17 A. Yeah. If you've done the arithmetic
18 correctly, yeah, that's the difference between the
19 numbers.

20 Q. Okay. And that's about 20 percent?

21 A. I'll take your word for that, yeah.

22 Q. Okay. Is it fair to assume that this
23 over-reporting on the CPS might be due to survey
24 respondents saying -- due, in part, let's say, to -- to
25 survey respondents saying they voted when maybe they

Page 99

1 didn't actually vote?

2 A. That's one possibility, but I don't see the
3 two sources of data that you've provided as having any
4 bearing on the CPS number because the CPS is an entirely
5 different survey. It's -- I -- I wouldn't expect the
6 numbers to be consistent at all.

7 Q. Why wouldn't you expect these numbers to be
8 consistent?

9 A. Because the CPS is not based on five-year CVAP
10 data. It is -- it is based on their own sample design
11 for the CPS, which is an entirely different
12 data-collection enterprise. And the -- the simple
13 statement I can make is that if you wanted to gain
14 insight into the 2020 CPS value, looking at the
15 five-year ACS CVAP or the administrative record count of
16 votes cast would not inform me at all about the accuracy
17 of the -- of the CPS because these are entirely
18 different universes.

19 Q. Uh-huh.

20 A. The -- the latter two sources of data that you
21 have cited really are not comparable to the -- what the
22 CPS does when they collect -- when -- when they do their
23 survey.

24 Q. Okay. But the 70.3 percent turnout rate, we
25 got that from the CPS, right?

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1 A. And that's based on the CPS.

2 Q. Uh-huh. Okay. Okay. So acknowledging that
3 these are different data sources, is it fair to say
4 there's about -- there's -- there's about a gap of
5 255 -- 250,000 voters between the official vote counts
6 and the estimate provided by the CPS?

7 A. I haven't done the arithmetic, but I would say
8 that there's a -- there would be obvious differences
9 between these three because they're three different
10 forms of data collection.

11 Q. Uh-huh.

12 A. And in the comparisons that you've set up
13 here, the ACS CVAP and the administrative record data
14 are -- are -- my simple answer is they're not at all
15 comparable to the CPS frame of data that are being used.
16 They just -- I -- I think any demographer would say you
17 can't -- you can't infer anything from the two other
18 sources about the CPS because it's its own separately
19 designed sample that's drawn from which calculations are
20 made that are internally consistent.

21 Q. Okay. So we can't infer anything from
22 differences between the CPS and vote counts as
23 reported --

24 A. You --

25 Q. -- by the state?

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1 A. You could only say -- no, I mean, they just --
2 they're not comparable. They don't -- they're just
3 apples and oranges.

4 Q. Okay. Turning back to Table 4A -- just give
5 me a moment. Oh, here we are.

6 MR. CARDIN: That's Exhibit 9?

7 MS. SMITH: Yes. Thank you.

8 Q. (BY MS. SMITH) So turning back to Table 4A,
9 which is Exhibit 9 in the record, and looking back at
10 Mississippi again.

11 A. Yes.

12 Q. And I see that the margin of error listed for
13 the 70.3 percent figure we just spoke about is
14 3.2 percent. Is that right?

15 A. That's the column under -- under the heading
16 "Voted," "Margin of Error"?

17 Q. Yes.

18 A. Yeah.

19 Q. So "Voted," "Margin of Error."

20 A. Right, right.

21 Q. Margin of error for 70 --

22 A. Yes.

23 Q. -- .3 percent, having voted being 3.2 percent?

24 A. Yes.

25 Q. Okay. So as I calculate it, the lower bound

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1 of the margin-of-error range for the estimate of
2 Mississippians who voted in 2020, being 70.3 percent
3 minus 3.2 percent, multiplied by that overall figure,
4 1.57 million, would put us at about 1.49 million?

5 A. Just give me the last three. I have 70.3
6 minus 3.2 --

7 Q. Yes.

8 A. -- equals what again?

9 Q. I don't -- I don't recall off the top of my
10 head.

11 A. Okay.

12 Q. I multiplied that by --

13 A. Okay. Well, the -- the number the -- the --

14 Q. -- the CVAP.

15 A. -- 70.3 minus 3.2 is --

16 Q. Yeah.

17 A. -- 67.1.

18 Q. Yes.

19 A. And that percent multiplied times -- what are
20 you multiplying it by?

21 Q. Times the estimated CVAP in Mississippi from
22 the Census being 2,200,000 -- 227,795.

23 A. Yeah.

24 Q. So I multiplied --

25 A. You multiplied that, and --

1 Q. -- that.

2 A. -- and you got that.

3 Q. Yeah. So I multiplied 67.1 --

4 A. Yeah.

5 Q. -- percent of 2.227795 million, and I got
6 about 1.49 million.

7 A. All right.

8 Q. Okay. So lower bound of the CPS range of
9 possible estimates is 1.49 million, using their margin
10 of error, right?

11 A. Well, that's what you've calculated. And as
12 I've said before, it -- I -- I agree with the arithmetic
13 that you've done, but --

14 Q. Okay.

15 A. -- I don't agree that it has any bearing on --
16 on anything to do with the CPS.

17 Q. Uh-huh.

18 A. That's a number that you would derive trying
19 to estimate something based upon the ACS CVAP and
20 another number that you've -- you've grabbed from this
21 data source. And as I say, it's an apples -- it's
22 combining apples and oranges, and it yields a number
23 that you said correctly is 1.49 million.

24 Q. Okay.

25 A. And if you asked me to interpret it, I have no

1 idea what it means.

2 Q. Okay. So the lower bound of the estimate here
3 provided by the CPS and combining that with the estimate
4 from the Census, so the same institution putting out the
5 survey of the population still puts us over 170,000 more
6 people than the actual vote count that we see from the
7 Secretary of State's office?

8 MR. CARDIN: Object to the form.

9 You may answer the question.

10 A. It's a hypothetical calculation of apples and
11 oranges, and I don't know what to say about it. I
12 don't -- it has no meaning to me.

13 Q. (BY MS. SMITH) Okay.

14 A. It -- it -- I can say your calculation has no
15 meaning to me, but I think you've done it correctly.

16 Q. Okay. I think we can move on. So let's look
17 back at your report Page 4 now, and I'm looking at
18 Footnote 5.

19 A. All right.

20 Q. So you said here that, quote, studies have
21 documented specific instances where respondents'
22 self-reports appear to have exaggerated actual measured
23 rates of voter registration and/or turnout, right?

24 A. Yes.

25 Q. Okay. When you refer to those, quote,

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1 specific instances where respondents' self-reports might
2 be shown to have exaggerated measured rates of voter
3 registration and/or turnout, what specific instances are
4 you referring to?

5 A. I'm referring to the political-science
6 literature that -- that -- where studies of particular
7 elections in particular years in particular states have
8 shown, by the standards of the study, that self-reports
9 appear to have exaggerated actual measured voter --
10 voter rates. So people find exceptions out there in the
11 world of elections based on administrative record data
12 to what is shown in self-reports for those particular
13 instances. Those are instances that may not be about
14 Mississippi or they may be instances that include many
15 states including Mississippi in one year, but none of
16 them, to my knowledge, covers any span of time on a
17 regular basis.

18 Q. Uh-huh.

19 A. So I acknowledge that there is -- this is a --
20 there's a controversy in the political-science
21 literature as to whether or not this is a problem, a
22 measurement problem. Some say yes; some say not really.

23 Q. Okay. Well, we'll -- we'll talk a bit more
24 about that. But looking now at the fourth full
25 paragraph on Page 4, you say here that -- I'm looking

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1 at -- I believe it's the third sentence. You say
2 that -- you quote: Do not disregard the possibility of
3 over-reporting a registration or turnout by Black voters
4 on the CPS. Do I have that right?

5 A. That's correct.

6 Q. So it's your view that there -- there's a
7 possibility of over-reporting on registration or turnout
8 by Black voters on the CPS?

9 A. Anything is possible here.

10 Q. Okay. Okay. But then you conclude here also
11 on Page 4 that the data strongly suggests an apparent
12 change since 2004 in Black political participation?

13 A. That's correct.

14 Q. Okay. And in the last sentence of this
15 paragraph, you note that you question attributing the
16 historical break you conclude occurred after 2004 to a
17 presumed differential over-reporting on the part of
18 Black voters relative to Whites, right?

19 A. Correct.

20 Q. Okay. So just to make sure I'm clear on your
21 view, is it your view that Black voters differentially
22 over-report registration and voting on the CPS or not?

23 A. I cannot say -- in answering the question, I
24 cannot say that I have an assumption there. I'm talking
25 in this paragraph here, where I said specifically

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1 "attributing this historic break to a presumed
2 differential over-reporting on the part of Black
3 voters" -- that's -- that's -- that's the part I
4 don't -- I -- I question.

5 Q. Okay. So just to make sure I'm understanding,
6 you do conclude, based on your review of the literature
7 in this field, that Black voters differentially
8 over-report registration on the CPS, or do you dispute
9 that?

10 A. I -- I don't have any conclusion about that.

11 Q. Okay.

12 A. I have stated here that I do question
13 attributing the historic break.

14 Q. Uh-huh.

15 A. That's all I'm referring to, is the break,
16 because that implies something else.

17 Q. Okay. But you don't offer a view on whether
18 Black voters are differentially over-reporting
19 registration and voting?

20 A. I -- I don't have any view on whether voters
21 generally over-report, and I don't have any views on
22 whether Black voters over-report more or less than White
23 voters over-report. I only have a view that refers to
24 the possible -- to the historical break and whether that
25 can be attributed to differential over-reporting on the

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1 part of Black voters relative to Whites. That means
2 Black voters started doing something differently but
3 White voters didn't.

4 Q. Okay. So in your view --

5 A. That's what --

6 Q. -- there's a historical pattern that changes
7 in 2004, and that is that Black voters start to
8 politically participate more than White voters, and that
9 can't be attributed to differential over-reporting?

10 A. No, that's not my view at all.

11 Q. Okay. I'm sorry. What's your view exactly?

12 A. What I'm saying is you cannot say that the
13 historic break -- or I should say it is highly
14 implausible that you can attribute the historical break
15 to Black voters over-reporting more than they were
16 before but White voters did not over-report more than
17 they were before.

18 Q. Great. Thank you for clarifying that.

19 A. That's what the word "differential" means in
20 that sentence.

21 Q. Okay. Perfect. Thank you for walking me
22 through all of that.

23 So I want to talk about your testimony as
24 an expert witness for the defendants in a case called
25 Thomas versus Bryant, also here in Mississippi. And I

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1 have a copy of -- we can mark that for the record.

2 (Exhibit 11 marked.)

3 Q. (BY MS. SMITH) This is going to be Exhibit 11
4 for the record, and this is Thomas v. Bryant, district
5 court decision from the Southern District of Mississippi
6 at 366 F. Supp. 3d 786 from 2019. Okay?

7 A. All right.

8 Q. Great. Do you remember offering testimony for
9 the defendants in this case?

10 A. I -- I recall doing it. I don't recall the
11 exact details of it. I just have to remember which case
12 this was.

13 Q. Sure. So looking just at the synopsis here,
14 three African-American voters brought an action in
15 Mississippi alleging the boundaries of a Mississippi
16 senate district violated Section 2 of the Voting Rights
17 Act?

18 A. Yeah, I'm trying to put this in perspective as
19 to what this was about, what my participation was. I'm
20 still not recalling exactly which case it is, but --

21 Q. I think -- let's -- let's -- let's talk about
22 that. So I -- I believe you offered testimony about
23 voting turnout in Mississippi, as well. And let's turn
24 to Page 9, and we can talk more.

25 A. That might help refresh --

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1 Q. Yes.

2 A. -- my memory on this.

3 Q. Great. So turning to Page 9, looking at the
4 right-hand side. And I'm at the third full paragraph.

5 A. Right. Yeah. Now -- this is coming back to
6 me now.

7 Q. Great.

8 A. I've got it.

9 Q. Great. So I'm seeing that you, quote,
10 gathered Census data about voter turnout in Mississippi
11 using surveys from even-numbered election years spanning
12 2004 through 2016 to show that African-Americans
13 self-reported higher turnout rates than White voters,
14 and you concluded that, "These data furnish convincing
15 evidence that African-Americans in Mississippi have
16 access to the political process and have participated in
17 that process at ever higher rates in recent years." Do
18 I have that right?

19 A. Just -- I -- I -- I think you have it right.
20 Just point to me the paragraph under --

21 Q. (Indicating.)

22 A. Okay. I get you.

23 Q. Yeah, the --

24 A. The "finally" --

25 Q. -- third full paragraph.

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1 A. The one that begins "finally." Okay.

2 Q. Yes.

3 A. Let me just read that.

4 Q. Okay. So as I understand it, you gathered --

5 A. Hold on. I just want to read --

6 Q. Oh, yeah.

7 A. -- the paragraph, just --

8 Q. Oh, take your time.

9 A. -- so it will bring it back.

10 Q. Please.

11 A. Okay. I'm set to go.

12 Q. Okay. Thank you. So would you agree with me
13 that your conclusion in this case is similar to your
14 conclusion that you're offering in this case -- in --
15 I'm sorry -- in the -- in the Mississippi versus -- the
16 NAACP versus SBEC case that we're talking about today,
17 your conclusion is similar to the conclusion you offered
18 in the Thomas v. Bryant case here?

19 A. I wouldn't say they are similar. I would say
20 the -- the conclusion was drawn in the same way that I
21 draw conclusions, generally, as a demographer looking
22 for patterns in elections.

23 Q. Okay. And in this case, you concluded that
24 African-Americans self-reported higher turnout rates
25 than White voters in a period spanning 2004 through

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1 2016?

2 A. Yes.

3 Q. Okay. And in this case, you're also offering
4 survey data to show that Black voters self-report higher
5 turnout rates since 2004? In this --

6 A. Yes, yes, yes, I see it. I was referring
7 specifically to the time series there of self-reported
8 turnout, right.

9 Q. Okay. Okay. So in your report -- let's
10 actually mark your report from the Thomas v. Bryant
11 case.

12 (Exhibit 12 marked.)

13 Q. (BY MS. SMITH) So I'm marking as Exhibit 12
14 for the record your report from January 7th, 2017 in the
15 case Thomas v. Bryant. All right?

16 A. All right.

17 Q. Great.

18 A. Thanks.

19 Q. Okay. Do you recognize this document as the
20 report you submitted in the Thomas v. Bryant case on
21 January 7th, 2019?

22 A. Yes, I do. Let me just take a look through it
23 because I need to refresh my memory --

24 Q. Sure.

25 A. -- on how I did this.

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1 Q. If it helps, the relevant part that I want to
2 talk about is on Page 3 --

3 A. All right.

4 Q. -- at your Table 1.

5 A. Yeah, that's what I'm looking at. Right.

6 Q. Great. So --

7 A. Hold -- yeah, hold on. Let me just -- let me
8 just take a look at this.

9 Q. Sure. Perfect.

10 A. Okay. What were your questions about this?

11 Q. Great. So let's look at Table 1.

12 A. Yeah.

13 Q. Would you say that this analysis here in your
14 Thomas v. Bryant expert report on voter registration and
15 voter turnout is similar to the analysis you've done for
16 this case?

17 A. Well, all I can tell you is that the source
18 here is the Current Population Survey voting and
19 registration tables, and I -- I can't tell you for sure
20 that the table that I got for each one of these years in
21 this study is the identical downloaded table it should
22 be or -- it cert- -- it certainly came from the same
23 source because it's the CPS, the Current Population
24 Survey.

25 Q. I understand. So in both -- in both cases,

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1 you looked at the CPS?

2 A. That's correct.

3 Q. And in both cases, you calculated Black voter
4 registration and turnout and you compared it to White
5 voter registration and turnout?

6 A. Yes. And I -- I see here there's a -- a note
7 that we're talking about very specific definitions,
8 Black alone than any -- rather than any part Black.

9 Q. Uh-huh.

10 A. And we're also talking about -- there was a
11 change in the data from voting age population 2004 to
12 '10 to CVAP from 2010 to '16.

13 So I -- I can't tell you, as we sit here
14 today, whether numbers in this table ought to agree with
15 numbers in my table in the current case that we're
16 talking about in this deposition.

17 Q. Uh-huh.

18 A. But the source are the same.

19 Q. Uh-huh.

20 A. And in each case, the source in both the study
21 we're discussing here and the one that the deposition is
22 about are sourced from the Current Population Survey,
23 which is a scientific survey.

24 Q. Fair enough. So in both cases, you're
25 reporting political participation by race in Mississippi

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1 using the CPS data?

2 A. Correct.

3 Q. And do you remember what the Court decided in
4 that case about your conclusions?

5 A. I remember that the Court ruled in favor of
6 the other party, not -- not the -- not the side that I
7 was engaged on.

8 Q. And you don't remember what the Court decided
9 about your testimony specifically or what they commented
10 on?

11 A. I -- I don't have any clear recollection other
12 than I think it was -- I really don't know why. I -- I
13 don't know how the result came about.

14 Q. Okay. That's fine. So let's turn back to the
15 opinion itself. Let's turn to Page 14. And I'm looking
16 at the bottom right-hand corner on the page. And
17 it's --

18 A. Okay. Tell me, again, which one am I looking
19 at?

20 Q. Oh, you're looking at Exhibit -- it should be
21 11.

22 A. 11.

23 Q. This is the Thomas v. Bryant opinion.

24 A. Yeah. Okay. Let me get that out. I think I
25 put that away somewhere.

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1 Q. I think you have it (indicating) --

2 A. Okay. There we go.

3 Q. Great.

4 A. Now you want me to turn to Page 11?

5 Q. Sorry. Page 14 now.

6 A. Page 14?

7 Q. Yeah, of Exhibit 11.

8 A. All right. Page 14. All right.

9 Q. Thanks for your patience there. So on
10 Page 14, now I'm around the bottom right-hand corner of
11 the page with the sentence starting "the defendants'
12 expert."

13 A. Uh-huh. Yes.

14 Q. And you were the defendants' expert they were
15 referring to here?

16 A. Correct.

17 Q. Okay. So the Court there says, quote: The
18 defendants' expert sought to minimize the on-the-ground
19 realities by pointing to statewide data showing that
20 African-American Mississippians report higher voter
21 turnout than White Mississippians in even-year
22 elections.

23 Right?

24 A. Yes.

25 Q. And then they said, quote: These data points

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1 fail to persuade. They look at the wrong jurisdiction,
2 the wrong election years and rely upon known issues with
3 self-reported voting surveys, issues that EI, in
4 contrast, seeks to overcome.

5 Do I have that right?

6 A. Yes.

7 Q. Okay. And just really quickly, because it's
8 mentioned here, I saw no CPS data is reported for
9 odd-numbered years in your -- in your report; it's all
10 even-numbered years.

11 A. I -- yes, yes.

12 Q. And the CPS doesn't report data for
13 odd-numbered years?

14 A. Not that I know of, no.

15 Q. And Mississippi holds elections in
16 odd-numbered years, right?

17 A. I'll take your word for that.

18 Q. Okay. Let's turn back one page to Page 13,
19 bottom left-hand corner of this document. I see that
20 the Court says here that you, quote, conceded that the
21 Census explicitly cautions that survey respondents
22 over-report their voting behavior. Right?

23 A. Which paragraph is that? Lower right?

24 Q. Oh, yeah. Sure. So we're on the --

25 A. Oh, I see. Okay.

1 Q. -- fourth full paragraph.

2 A. Okay.

3 Q. I'll just --

4 A. Yeah. Okay. I see it.

5 Q. I'll just read the --

6 A. Sure.

7 Q. -- the full quote.

8 A. All right.

9 Q. So, quote: Dr. Morrison is an experienced
10 demographer. He knows the problems with his testimony.

11 And then I'm moving on to: He did not
12 look at voter turnout in odd-numbered years, and he
13 conceded that the Census explicitly cautions that survey
14 respondents over-report their voting behavior.

15 Do I have that right?

16 A. Yes.

17 Q. Okay. I guess, what do you think of that
18 assessment?

19 MR. CARDIN: Object to the form.

20 But you may answer the question.

21 A. He -- that -- that's -- that's what I said.

22 Q. (BY MS. SMITH) Okay. So you conceded in that
23 case that the Census explicitly cautions that survey
24 respondents over-report their voting behavior?

25 A. I made that point in this particular context,

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1 yes --

2 Q. Uh-huh.

3 A. -- based -- based -- excuse me -- based on the
4 state of knowledge at that point in time about
5 over-reporting and under-reporting.

6 Q. Okay.

7 A. And that point in time, whatever the date
8 was --

9 Q. So this was --

10 A. -- was -- yeah, that -- that's what was --
11 that's what political scientists whose work I had
12 consulted -- that was the state of the political-science
13 knowledge as I gleaned it from the political-science
14 literature at that earlier point in time.

15 Q. But your testimony was that the Census
16 explicitly cautions that survey respondents over-report
17 their voting behavior, right?

18 A. Yes, I'm sure the Census Bureau explicitly
19 cautions that somewhere in their -- in -- in what they
20 say today since it's one of their --

21 Q. So would that point change based on --
22 their -- their explicit caution about over-reporting --

23 A. Yeah.

24 Q. -- would that change based on any literature
25 since 2019? I'm just speaking about their

1 acknowledgment.

2 A. No, their -- I -- I think they were
3 acknowledging what they knew from the political-science
4 literature.

5 Q. Okay.

6 A. And -- and I -- let me take that -- I believe
7 the Census Bureau was saying that they know that when
8 respondents self-report, they can over-report or
9 under-report on anything they ask them about. That's --
10 that's kind of like a -- they know that for a fact.
11 That's what they watch out for.

12 Q. All right. So this issue went up on appeal,
13 as well. So let's just look at what the Fifth Circuit
14 had to say here. So I'm going to mark as the next
15 exhibit -- that's going to be Exhibit 13.

16 (Exhibit 13 marked.)

17 Q. (BY MS. SMITH) For the record, this is
18 Thomas v. Bryant Fifth Circuit decision from 2019 at 938
19 F. 3d 134, right?

20 A. Okay.

21 Q. All right. So do you -- let's turn to
22 Page 18. All right. And I'm on the first full
23 paragraph on the right-hand side --

24 A. Uh-huh.

25 Q. -- starting with the sentence starting

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1 "however." It says, quote: However, the data used by
2 Dr. Morrison had serious problems. It was self-reported
3 rather than based on official state records. It was --
4 it came from statewide elections as opposed to District
5 22 elections and from even-numbered years for federal
6 elections as opposed to odd-numbered years for state
7 elections.

8 Do I have that right?

9 A. Yes.

10 Q. Okay. So the Fifth Circuit found that the
11 data you used had serious problems, being the CPS data,
12 in that it was self-reporting rather than based on
13 official state records?

14 MR. CARDIN: Object to the form.

15 You may answer the question.

16 A. That -- that's what it says here, yes.

17 Q. (BY MS. SMITH) So in -- were you aware that
18 either the Southern District of Mississippi or the Fifth
19 Circuit had commented on your analysis?

20 A. Oh, yes. I mean, I was aware -- I was aware
21 what the judge said in the case.

22 Q. Oh, you were aware? Okay.

23 A. Oh, yeah, I've seen this.

24 Q. You've seen this before?

25 A. I mean, it's -- I -- I read it.

1 Q. Okay.

2 A. It's not a surprise. I --

3 Q. You read it at the time?

4 A. Yeah, yeah.

5 Q. Okay.

6 A. He -- he saw -- the -- the judge, who had a
7 lot of familiarity with the locale, saw the limitations
8 of the demographic approach that I took.

9 Q. Okay. So after the Southern District of
10 Mississippi and then the Fifth Circuit addressed this
11 issue of over-reporting of Black turnout on the CPS, did
12 you look into the issue further?

13 A. No, because I have -- demographers have no way
14 of looking into what's over-reported. We use Census
15 data. And I'm fully aware, based on this case, that the
16 Census Bureau's data are as they say. They --
17 they're -- they -- they are what they are. The Census
18 Bureau, you know, it puts in caveats.

19 Q. Sorry. So is it your testimony that
20 demographers can't look into the issue of over-reporting
21 of Black turnout on the CPS?

22 A. Not -- not in any way that I know how because
23 they -- we rely on the Census Bureau for scientifically
24 accurate data, and we are aware of the caveats that
25 apply.

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1 Q. But you testified earlier that you have
2 followed the political-science literature on --

3 A. Yes.

4 Q. -- the CPS?

5 And so you haven't looked at any
6 political-science literature on over-reporting of Black
7 turnout?

8 A. Oh, no, I've -- I'm -- I'm aware of what the
9 literature says. And what I'm saying is that the
10 over-reporting that the Census Bureau acknowledges can
11 occur is a given. And when you look over time, it's one
12 factor you have to consider. And in this case that
13 we're talking about here, I was assembling data on
14 elections, and the judge called attention to the fact
15 that there's over-reporting, which I don't dispute. I
16 was not looking at 40 years' worth of time trend in this
17 case.

18 Q. Okay. So after the judges made this finding
19 and you reviewed that finding, did you do anything to
20 change your methodology to account for the flaws the
21 Court noted, being the issue of over-reporting --

22 MR. CARDIN: Object to the form.

23 Q. (BY MS. SMITH) -- of Black turnout?

24 MR. CARDIN: You may answer the question.

25 A. I was not asked to do that. And the decision

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1 was already made, so there was -- I can't understand why
2 I would be asked to do it.

3 Q. (BY MS. SMITH) Oh, no. Sorry. Before you
4 offered a report in this case, did you change any of
5 your methods --

6 A. No.

7 Q. -- to account for the over-reporting issue?

8 A. No. There was no need to.

9 Q. Okay. And when you reviewed the literature
10 about Black voter turnout on the CPS, what did -- what
11 did that literature say happens?

12 A. You mean in this present case?

13 Q. So you testified that you have looked into
14 literature about over-reporting of Black voter
15 turnout --

16 A. Right.

17 Q. -- on the CPS. What did -- what did you find
18 when you looked at that literature? What did it say?

19 A. The literature has identified it as --
20 over-reporting as a source of concern in using
21 self-reported data. And the literature also shows that
22 there are different points of view about what the
23 over-reporting means and how it figures in drawing
24 conclusions. There is -- it -- it is a controversial
25 topic among political scientists, and I'm aware of the

1 controversy in that field. And I -- being a
2 demographer, I work with the numbers, and I'm conscious
3 of what -- what is being said about that controversy.

4 Q. Okay. So after a federal judge here
5 discounted your report in the Thomas versus Bryant case
6 based on, in part, the limitations of self-reported
7 voting surveys, you continued to use them when you were
8 producing your report in this case?

9 MR. CARDIN: Object to the form.

10 You may answer the question.

11 A. I used the CPS with full knowledge of its
12 limitations over a long period of time, yes.

13 Q. (BY MS. SMITH) Including over-reporting?

14 A. I -- I was aware of -- I -- I was fully aware
15 of that issue and that concern, yes.

16 MS. SMITH: Okay. I think we can take a
17 break now because I'm about to change topics, and we can
18 go off the record.

19 (Recess taken from 11:51 to 11:57 a.m.)

20 Q. (BY MS. SMITH) All right. So let's again
21 turn to your report. I'm on Page 4. You note here on
22 the first full paragraph each individual percentage in
23 Table 1 is a sample-based measure with a statistical
24 margin of error, right?

25 A. Correct.

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1 Q. Okay. So as we talked about earlier, the
2 actual percentage could fall within a range of numbers?

3 A. That's correct.

4 Q. And did you report that range of numbers for
5 each of the estimates in Table 1?

6 A. No, I did not include them, but I have them
7 available.

8 Q. Okay. And what about in Table 2; did you
9 report them there?

10 A. I think the answer is the same. Yes, I -- the
11 answer is the same.

12 Q. Okay. And in thinking about voter turnout or
13 voter registration by certain groups of voters, are you
14 able to say whether voter turnout among one group is
15 higher than the other based on survey estimates without
16 looking at the margin of error?

17 A. I would not want to make any such statements
18 without assembling the data in a way that I could
19 account for the margins of error and test the -- you
20 know, the significance of change from one year to
21 another.

22 Q. Okay. So why would you want the margin of
23 error available?

24 A. To document with strict precision the exact
25 point at which one could say there was a change in a

1 40-year trend.

2 Q. Okay. And would you want to know it also for
3 an individual year? Say 2008, would you want to know
4 the margin of error when you're comparing voter turnout
5 among one group in one individual year to voter turnout
6 in another group for an individual year?

7 A. If I wanted to, that would be how I would do
8 it, but that is not my intent here.

9 Q. Okay. So your intent wasn't to compare
10 individual years of voter turnout estimates to one
11 another?

12 A. No. I was -- I'm simply concerned with the
13 overall time trend over 40 years, irrespective of the
14 exact statement that one could make and the confidence
15 level of that statement for one year versus another or
16 one group versus another group in a particular year.

17 Q. Okay. All right. Okay. So you're not
18 contending that Black turnout was higher than White
19 turnout in, say, 2020 on an individual basis?

20 A. I -- I could do -- I could make such
21 statements, but I haven't -- that -- that's not part of
22 what I intended to do.

23 Q. Okay. So your analysis does not report
24 differences in voter turnout between individual years?

25 A. I -- as I say, I had no need to do that. I'm

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1 talking about the overall trend and the change that is
2 apparent starting in about 2002.

3 Q. Okay. I think we'll talk more about that
4 change in a minute, but for now, I want to talk about
5 the underlying data that you -- the defendants' counsel
6 represent that you used in producing your report. So if
7 I could -- the next exhibit, please, I'll mark as
8 Exhibit 14 for the record.

9 (Exhibit 14 marked.)

10 Q. (BY MS. SMITH) I'll represent to you that
11 defendants' counsel e-mailed this to plaintiffs' counsel
12 in the form of an Excel spreadsheet, and I went through
13 and printed out the individual tabs, and I've labeled
14 them for you by year as they were labeled in the
15 spreadsheet.

16 A. All right.

17 Q. Does that sound all right? All right. Here
18 you are. So I want to turn to the year 2008. It should
19 be written at the top, which was the label in the Excel
20 spreadsheet, the tab label.

21 A. All right.

22 Q. So I'm looking at the tab of the spreadsheet
23 for CPS estimates of registration and voter turnout by
24 race in 2008, and I don't see a margin of error reported
25 here. Is that right?

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1 A. I -- I don't see a margin of error, but I'm
2 just trying to see what you have.

3 Q. Is there a margin of error for the estimates
4 of White non-Hispanic alone turnout and of Black alone
5 or in combination turnout or registration for either
6 group?

7 A. Let me just see where this came from. This
8 table is one formatted version of data that provide the
9 numbers -- as far as I can tell here, the numbers apart
10 from the margins of error. I'm -- I'm -- I don't see
11 the margin of error presented here, but that doesn't
12 mean they don't exist. There's -- there's a whole
13 separate table for that.

14 Q. So they -- I'm sorry.

15 A. And, actually, I realize this is as of 2008,
16 and I don't know if the American Community Survey or any
17 other -- well, I don't know how they -- how -- I don't
18 know how the Census Bureau gathered these data in 2008,
19 but they, apparently, have not in this table shown
20 margins of error. Let me just read the -- the stuff
21 here. Current Population Survey.

22 Q. So I -- I don't want to interrupt your
23 reading. I'll give you a moment.

24 A. Yeah. All right. Is your question about
25 the -- what the margins of error are?

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1 Q. My question is simply: Is -- is there a
2 margin of error reported here in this -- this document?

3 A. I would assume there is, yes.

4 Q. In this, do you see a margin of error
5 reported?

6 A. Oh, I -- I don't see it reported in this
7 table. That doesn't mean it -- it -- apparently, in
8 2008, they were not -- they were not presenting the full
9 details of people in 2018 would want to see, let's say,
10 or 2022. The format of this table is the way they
11 presented it in 2008. That is not to say that there
12 weren't margins of error that one could obtain by
13 looking for another table showing margins of error.

14 Q. Okay. So one might obtain a margin of error
15 by going to the Census and getting it from their data,
16 but it's not in --

17 A. In the --

18 Q. -- your spreadsheet?

19 A. It's -- it's not in the table that you've
20 shown me here.

21 Q. Okay. And it's not in your report, either?

22 A. No. I -- no. I -- I know where to get it,
23 but I --

24 Q. Okay.

25 A. -- I haven't needed it.

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1 Q. Okay. That's fine. So turning to the next
2 page, 2010, I don't see a margin of error here, either.
3 Right?

4 A. Nor do I.

5 Q. Okay. And to 2012, same --

6 A. No margin of error.

7 Q. -- question: No margin of error?

8 A. No.

9 Q. 2014, I don't see a margin of error. 2016 --

10 A. No.

11 Q. -- no margin of error? Okay.

12 And 2018, also no margin of error, right?

13 A. Yeah. In 2020, they show a margin of error.

14 Q. Yes. Okay. So --

15 A. Yeah.

16 Q. -- from 2008 until 2018, you didn't report a
17 margin of error for the CPS estimates that you used,
18 right?

19 A. No. What -- what's shown here is that the
20 table that you've accessed did not begin to report the
21 margin of error until 2020. That's not to say that
22 there wasn't a separate table showing margins of error
23 that one could obtain if one looked for them elsewhere.
24 And it may be that they weren't published, but could be
25 obtained upon request.

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1 Q. Okay. So, yeah, this being the spreadsheet
2 that you provided via defendants' counsel, there's no
3 margin of error here in your underlying spreadsheet for
4 those --

5 A. In the -- in the --

6 Q. -- entries, 2008 to 2018?

7 A. Yeah, in -- in Table 2 of my report, I do not
8 show margins of error in -- for any of the years.

9 Q. Okay. And same for the underlying
10 spreadsheet: For 2008 to 2018, no margin of error is
11 included?

12 A. In the ones that you got.

13 Q. Okay. Yeah. But if I maybe went to the -- if
14 I went to the Census, I could find it elsewhere?

15 A. I'm quite sure you could find it elsewhere,
16 yes.

17 Q. Okay. Thank you for clarifying that.

18 For 2008 to 2018, do you know whether the
19 turnout and registration differences you report fall
20 within the margin of error, meaning the estimate for
21 Black voter turnout falls within the margin of error in
22 the interval for White voter turnout, for example?

23 A. I don't -- I don't know for any particular
24 year what the margin of errors are, and it's not a
25 central question to the time trend that I was looking at

1 over a 40-year period.

2 Q. Okay. So you don't know whether the range of
3 margins of error for Black and White voter turnout for
4 individual years overlap with one another?

5 A. I don't know for any particular year.

6 Q. Okay.

7 A. But I -- I would know where to get the data,
8 and I would probably consult it before I finalized my
9 testimony.

10 Q. All right. So let's look at 2020 for a
11 moment. And here, you do have the margins of error
12 reported, right?

13 A. Yes.

14 Q. All right. And under the table, you've
15 labeled the margin of error -- sorry. The font is a
16 little bit small, but as I read it, it says: This
17 figure added to or subtracted from the estimate provides
18 the 90 percent confidence interval.

19 Right?

20 A. Yes.

21 Q. All right. So we're going to do some adding
22 and subtracting again. If you want to get your paper or
23 your calculator, please take a moment.

24 A. Okay. I -- I want to state in advance of this
25 that I will do my best at calculating numbers you give

1 me.

2 Q. Okay. Sure. Best is all we can all do.
3 So -- all right. So looking at the "White non-Hispanic
4 alone" row under the column "Percent Registered
5 Citizen" -- are you with me? It's highlighted in green.

6 A. Yeah, in -- in green, yes.

7 Q. Yeah.

8 A. Okay.

9 Q. So I see 79.2 there.

10 A. Right.

11 Q. And that's the point estimate for percentage
12 of White non-Hispanic alone individuals that is reported
13 by the CPS survey that were registered in 2020, right?

14 A. Correct.

15 Q. Okay. And going to the left of that, I'm
16 seeing under margin of error, 3.6. Right?

17 A. Yes.

18 Q. Okay. So I just want to walk through how I
19 might calculate the range based on the margin of error
20 that the actual number of White non-Hispanic alone
21 citizens -- what percentage were registered in 2020,
22 according to this data. Okay?

23 A. All right.

24 Q. So I believe 79.2 plus 3.6 would be 82.8.

25 A. Yes. Right.

1 Q. Okay. And 79.2 minus 3.6 is 75.6?

2 A. Yes.

3 Q. Does that sound right?

4 A. Yes.

5 Q. Okay. So the actual percent registered White
6 non-Hispanic alone citizens reporting on the CPS -- as
7 reported on the CPS -- excuse me -- falls somewhere
8 between 82.8 and 75.6?

9 A. Yes.

10 Q. And we can be 90 percent confident in that?

11 A. That's the way the data are used, yes.

12 Q. Okay. Great. And then I'm looking now a few
13 lines below that. We have Black alone or in
14 combination.

15 A. Yes.

16 Q. And moving over to the "Percent Registered
17 Citizen" column, I see 83.4. So as I read it, the CPS
18 is reporting that 83.4 percent individuals Black alone
19 or in combination would have self-reported being
20 registered?

21 A. Right.

22 Q. Okay. And 4 -- one over -- one to the left
23 over from that, 4.1 margin of error -- 4.1 being the
24 margin of error --

25 A. Yeah.

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1 Q. -- for that figure?

2 Okay. So just some math again. So 83.4
3 plus 4.1 is 87.5?

4 A. Hold on just a second here.

5 Q. Sure.

6 A. As I look at this table, you have margin of
7 error for the total percent registered, but you do not
8 have a margin of error for the percent registered of
9 citizens. I'm just trying to figure out how this table
10 has been set up.

11 Q. Oh, okay. That's helpful.

12 A. I -- I don't know that the -- what you're --
13 what you're computing here are margins of error for the
14 column entitled "Percent Total Registered." And it
15 appears to me -- again, I -- I don't like to do instant
16 analysis with a Census --

17 Q. Sure.

18 A. -- Bureau table --

19 Q. Of course.

20 A. -- but the column headed "Percent Registered
21 Citizen" does not have an accompanied margin of error
22 for citizens only. Now, that's a -- it may be that you
23 can have the total with the margin of error or you can
24 have the citizens alone without a margin of error.

25 Q. Uh-huh.

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1 A. And that's one limitation of -- or I should
2 say that's one aspect of this table that would prevent
3 me from applying the margin of error --

4 Q. Uh-huh.

5 A. -- for the total to the "Citizen" column
6 instead. I just would have to -- I would have to study
7 this and read the fine print before I could really kind
8 of follow your calculations along and make any
9 informed --

10 Q. Of course.

11 A. -- statement about it.

12 Q. Okay. So it's your testimony that you're not
13 sure whether 4.1 being -- or you're not sure whether the
14 figures in the "Margin of Error" column are referring to
15 percent registered for citizens as opposed to percent
16 registered for total?

17 A. That is correct.

18 Q. Okay. Did you make this table?

19 A. No, I -- I -- I didn't make this table. You
20 made it.

21 Q. No. So I printed this out, but your
22 counsel --

23 A. Oh.

24 Q. -- provided it to me. Do you understand that?

25 MR. CARDIN: Let's go off the record for

1 just a second.

2 (Recess taken from 12:15 to 12:16 p.m.)

3 A. Let me say that what I am looking at here is a
4 version of the tables that the Census Bureau provides
5 for people who want to look at the table for a
6 particular year for a particular place, and they want to
7 see it on a piece of paper. The Census Bureau also
8 allows one to download a large body of data from -- in a
9 whol- -- in a wholly different way that can be set up as
10 a database.

11 Q. (BY MS. SMITH) Uh-huh.

12 A. And it is the database that, I believe, would
13 allow me to answer the questions that you're asking, but
14 I can't answer them based on these data because these
15 are really for public consumption as opposed to a
16 database for statistical analysis and tabulation and
17 preparing the kind of table that I had here. And I -- I
18 don't know what to say about it, but it -- the Census
19 Bureau provides data in different forms for different
20 purposes.

21 Q. Uh-huh.

22 A. And what we have here is an example of people
23 who want to see a table on a piece of paper as opposed
24 to a data scientist who wants to set up a database to be
25 interrogated by me and put together in a customized way

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1 for analysis, which in this case of Table 2 in my report
2 is designed to show, in the simplest form, a time series
3 over time and a graphic representation in Figure 1 on
4 Page -- Page 5 of my report. So I just -- that's --
5 that's a caveat I want to make known to you.

6 Q. Okay. Sure. So --

7 A. And now, continue to ask the questions, and
8 I'll answer them --

9 Q. Of course.

10 A. -- as best I can.

11 Q. So just to make sure I'm clear, this is the
12 data you relied on in producing your report? That's
13 what you represented to us via defense counsel? This is
14 the spreadsheet that you provided?

15 A. This is the spreadsheet that has been
16 provided, yes.

17 Q. By you? By you?

18 A. Yes.

19 Q. Okay. And you did not make this table, or you
20 did make this table?

21 A. This --

22 Q. Looking at the spreadsheet now.

23 A. The -- the spreadsheet --

24 Q. Uh-huh.

25 A. -- is the table that I believe I would have

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1 accessed if I had gone online and requested it as a
2 table as opposed to as a -- as an element of a database
3 with the full information.

4 Q. Did you make this spreadsheet, or did Thomas
5 Bryan make this or someone else?

6 A. I -- I honestly don't recall whether this was
7 mine or whether -- this looks, to me, like this is
8 something that I would have downloaded myself to look at
9 it.

10 Q. All right. So you're not sure whether you
11 made this spreadsheet?

12 A. I'm not sure. I mean, I -- I don't know.
13 This looks, to me, like the source that you would get if
14 you went to the website --

15 Q. Uh-huh.

16 A. -- at the bottom. That's -- that's one way of
17 getting it.

18 Q. Okay. And you're not sure whether the margins
19 of error for percent registered citizen is included
20 here? You don't know whether --

21 A. That's correct. I'd have to check on that.

22 Q. So I think we can move on from that since --
23 I -- I just wanted to walk through the margin-of-error
24 calculation. But if you're not sure --

25 A. Sure.

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1 Q. -- if that's the right one, I don't want to
2 say anything --

3 A. All right.

4 Q. -- misleading. All right. So why don't we
5 move on. So let's actually turn to the tab for the year
6 2016 in this same spreadsheet.

7 A. All right.

8 Q. Okay. And as we talked about earlier, there's
9 no margin of error listed here in -- in your
10 spreadsheet. So I'll represent to you I -- I looked at
11 the margin of error for some other years when I couldn't
12 find it.

13 A. Yes.

14 Q. And I'll represent to you that as the Census
15 Bureau reports it, in 2016 -- and I'm looking at "voter
16 turnout White non-Hispanic alone" -- the figure you
17 reported for "percent voted citizen" here was 67.7.
18 Looking at -- under "Voted," under "percent voted
19 citizen for White non-Hispanic alone," I see 67.7.

20 A. This is 2016?

21 Q. Yes.

22 A. Oh, I'm sorry. Okay. Yeah. I got it. Okay.
23 I see.

24 Q. Okay. 67.7?

25 A. Right. Yeah.

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1 Q. Great. All right. And I'll represent to you,
2 when I looked up -- as you note, the Census Bureau does
3 make this public. So I looked up the margin of error,
4 and for this figure, it was 3.3. All right?

5 A. All right.

6 Q. All right. So let's do that calculation
7 again, but this time, we can be -- we can use that 3.3
8 number because I looked it up --

9 A. All right.

10 Q. -- and I have it available.

11 Okay. So the interval for voter turnout
12 would be, at the bottom of the interval, 67.7 minus
13 3.3 --

14 A. Yeah.

15 Q. -- which would be 64.4?

16 A. Yeah.

17 Q. Okay. And then the top of the interval would
18 be 67.7 plus 3.3 --

19 A. Yes.

20 Q. -- which I calculate to be 71?

21 A. Right.

22 Q. Okay. So the interval for range of possible
23 estimates as reported by the CPS for White non-Hispanic
24 alone voter turnout in 2016 would be 64.4 to 71?

25 A. That's correct.

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1 Q. Okay. Let's do the same thing for turnout
2 under Black alone or in combination. All right?

3 A. Yeah.

4 Q. All right. So the point estimate you report
5 for 2016 is 69.2 for Black alone or in combination
6 percent voted citizen?

7 A. Yeah. Yeah, I gotcha. 69.2.

8 MR. CARDIN: Yeah, object to the form.

9 But you may answer the question.

10 THE WITNESS: All right.

11 Q. (BY MS. SMITH) Okay. So let's do the range
12 of possible estimates again. So 69 -- oh, sorry. I
13 didn't already mention this. I also looked at the CPS
14 margin of error here for Black alone or in combination
15 percent voted citizen, and that margin of error was 5.2.
16 Okay?

17 MR. CARDIN: Object to the form.

18 You may answer the question.

19 A. All right. I'm -- the answers I'm giving are
20 premised on -- I should say I -- I don't know where you
21 got the margin-of-error-data from, so --

22 Q. (BY MS. SMITH) Okay.

23 A. -- I'm taking the numbers you're giving me and
24 you're representing that -- that you've correctly
25 accessed them.

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1 Q. Yes, I'm representing --

2 A. And I can't -- I can't validate your numbers,
3 so you're giving me --

4 Q. No, that's very fair.

5 A. All right.

6 Q. So I'll represent to you that I looked up the
7 CPS margins of error that they reported and that I saw
8 5.2.

9 A. All right.

10 Q. But I take -- I take your point that you don't
11 know --

12 A. Sure. Yeah.

13 Q. -- the margins of error here.

14 A. These are the numbers you're giving me --

15 Q. Yeah.

16 A. -- and we're talking about a hypothetical --

17 Q. Right.

18 A. -- analysis based on numbers you gave me.

19 Q. Based on numbers I have --

20 A. Okay.

21 Q. -- because you don't have them here.

22 A. Because you -- you accessed them and I didn't
23 access them. Okay.

24 Q. That's right.

25 MR. CARDIN: And -- and my objection is

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1 objection to the form of the question for this whole
2 line of questioning for that reason.

3 MS. SMITH: Okay.

4 MR. CARDIN: But you may go ahead and
5 answer.

6 MS. SMITH: Fair enough.

7 Q. (BY MS. SMITH) So taking my representation of
8 5.2 just for purposes of this --

9 A. Yeah.

10 Q. -- discussion, let's do the range of possible
11 estimates for Black voter turnout again. Okay?

12 A. Uh-huh.

13 Q. Okay. So I -- as I calculate it, 69.2 minus
14 60 -- minus 5.2 would be the bottom of the range of
15 possible estimates --

16 A. Right.

17 Q. -- for Black voter turnout in 2016, and that
18 would be 64?

19 A. 64 percent, right.

20 Q. Okay. And then the top of the range of
21 possible estimates would be 69.2 plus 5.2?

22 A. Yeah.

23 Q. And that would be 74.4?

24 A. Right.

25 Q. Okay. So does a range of 64.4 to 71, which

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1 was the range of White voter turnout possible estimates
2 that we just discussed --

3 A. Uh-huh.

4 Q. -- overlap with the range 74.4 to 64?

5 A. Yes, it does.

6 Q. Okay. So is it fair to say that the range of
7 possible estimates that the CPS reports for Black voter
8 turnout in 2016 that you report in Table 1 overlaps with
9 the range of possible estimates the CPS reports for
10 White voter turnout in 2016?

11 A. Based on your data, yes, that's a correct --

12 Q. Okay.

13 A. -- conclusion to draw.

14 Q. Based on the data that I'm representing to
15 you --

16 A. Yeah.

17 Q. -- I pulled --

18 A. That's right.

19 Q. -- from CPS? Okay.

20 Does the point estimate you report for
21 Black voter turnout -- so that's 69.2 -- fall within the
22 range of possible likely estimates of White voter
23 turnout? So that's 64.4 to 71.

24 A. The way I would state it is I cannot rule out
25 with scientific certainty that it does not overlap.

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1 Q. Okay. Does 69.2 fall within 64.4 to 71?

2 A. Say that again, just so I see --

3 Q. Yeah, I'm just asking you --

4 A. Yeah.

5 Q. -- if 69.2 is between 64.4 and 71.

6 A. Oh, yes.

7 Q. Okay.

8 A. Yeah, yeah. I see. Okay.

9 Q. I just simplified it --

10 A. Right.

11 Q. -- a little bit there.

12 A. All right.

13 Q. Thanks. So -- and then vice versa. So does
14 the estimate of White voter turnout, which you reported
15 as 67.7, fall within the range of possible estimates
16 that we just calculated for Black voter turnout based on
17 the margins of errors that I represented to you, which
18 were 74.4 to 64?

19 A. Yes, it does fall within that range.

20 Q. Okay. And what does it mean for the point
21 estimates for Black turnout to fall within the range of
22 possible estimates for White turnout?

23 A. The statement that -- the conclusion that I
24 would say it warrants is one cannot rule out with
25 scientific certainty the possibility that there is no

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1 difference in turnout between the two groups or that one
2 group exceeds the other group. And that could go either
3 way. It could be the reverse of Whites. In other
4 words, just -- you can't draw any conclusions from this
5 about the difference. You can't rule out anything with
6 scientific certainty.

7 Q. So Black voter turnout could be lower than
8 White voter turnout --

9 A. It could be.

10 Q. -- in 2016?

11 A. You can't rule that out as a possibility from
12 these data.

13 Q. Okay. Do you know, for all the other years
14 since 2004 you report and you discuss in your report, if
15 the point estimate for Black voter turnout or
16 registration falls within the range of possible
17 estimates for White voter turnout or registration?

18 A. I -- I know where to get those data, but that
19 wasn't the basis on which I drew my conclusions.

20 Q. And sitting here today, do you -- do you know
21 if they overlap?

22 A. I -- I would -- I would assume there's a
23 reasonable possibility that they overlap quite often.

24 Q. Okay. And -- okay. So you drew your
25 conclusions about the pattern you observed happening

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1 since 2004 without looking at possible overlap between
2 margins of error for Black voter turnout or registration
3 and White voter turnout or registration?

4 A. I didn't look at the individual years
5 themselves because that's not -- that's not what I'm
6 basing my opinion on.

7 Q. Okay. So you calculated the patterns without
8 looking at the possible range of estimates and whether
9 they overlap?

10 A. No, that's -- that's not a correct statement.
11 I used a different criterion for evaluating the
12 historical pattern over 40 years, and it's a binary
13 comparison.

14 MS. SMITH: All right. I think I'm done
15 for now, and we can -- it's 12:30 -- it's about 12:30.
16 So we can take our break for lunch, if that works.

17 MR. CARDIN: Okay.

18 (Recess taken from 12:31 to 1:04 p.m.)

19 Q. (BY MS. SMITH) All right. I'm turning back
20 to your report, Page 4, and the third full paragraph.

21 A. All right.

22 Q. And I hear you use the -- I see you use the
23 phrase "statistical" -- sorry. I'm in the second full
24 paragraph, the third paragraph.

25 A. Uh-huh.

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1 Q. Yeah. I see you use the phrase "statistically
2 insignificant." What is statistical significance?

3 MR. CARDIN: Objection to the form.
4 Could you restate?

5 MS. SMITH: Yeah, I can rephrase the
6 question.

7 MR. CARDIN: Yeah. Where are you?

8 MS. SMITH: Page 4, the second full
9 paragraph.

10 MR. CARDIN: Uh-huh.

11 MS. SMITH: I referenced that
12 Dr. Morrison used the term "statistically
13 insignificant."

14 MR. CARDIN: Is that in the third line of
15 the second paragraph?

16 MS. SMITH: Yes, that's right.

17 MR. CARDIN: Is that what you're
18 referring to?

19 MS. SMITH: "Statistically
20 insignificant."

21 MR. CARDIN: Okay.

22 MS. SMITH: And I'm just --

23 Q. (BY MS. SMITH) My question is: What is
24 statistical significance?

25 A. The word "significance" refers to the likely

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1 reality of what appears to be a difference between two
2 numbers. Statistically significant in that context
3 means that when you see a difference between two
4 numbers -- and I use an example here. Do you have a
5 fever? You have a -- your temperature is -- should be
6 98.6, and the thermometer says it's 98.7. You can
7 understand that to be an insignificant difference. And
8 the term "statistically" would mean it's referring to a
9 population of many people or many instances in which you
10 see that difference. That's the only way I can explain
11 it to you.

12 Q. Okay. So is it a way of demonstrating whether
13 results from a survey are explainable by random chance
14 or whether they're consistent with a researcher's
15 hypothesis?

16 A. When you -- what did you mean by "it"? Do you
17 mean statistical significance?

18 Q. Yeah. Is statistical significance a way of
19 evaluating whether results are explainable by chance
20 versus whether results are consistent with a research
21 hypothesis?

22 A. I'd -- I'd say that's a fair statement, yes.

23 Q. Okay. So it helps us know whether we can draw
24 conclusions from the difference between two estimates?

25 A. I would say it's the basis for drawing

1 conclusions.

2 Q. Okay. So would it be fair to say if the
3 difference between two estimates is not statistically
4 significant, you can't conclude with certainty which one
5 is higher and which one is lower?

6 A. In the hypothetical case that you're
7 describing here, yes.

8 Q. Okay. And in your field, is it important to
9 consider whether the difference between two estimates is
10 statistically significant?

11 A. It depends on what kind of conclusion I'm
12 seeking to draw from a particular year of data.

13 Q. Okay. So if you're looking at two estimates,
14 say, for one year, voter turnout by one group and voter
15 turnout by another group, you can look to statistical
16 significance to conclude which one is higher and which
17 one is lower?

18 A. Not in a -- not necessarily in a particular
19 year. That -- that's an important point to understand.
20 What you may be able to do is say one number was higher
21 than the other. With the thermometer analogy, it was
22 98.7, whereas it should have been 98.6. And that's all
23 you can know from it, is that it is -- it differs in a
24 direction rather than a quantity that would be
25 statistically significant in that particular instance,

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1 such as 103 versus 98.6, which would be medically
2 significant.

3 Q. Okay. So in the example you just used, you
4 would use statistical-significance testing to know
5 whether one temperature -- an estimate of one
6 temperature was a meaningful difference from an estimate
7 of another temperature? Is that what you're saying?

8 A. No, that's not what I'm saying.

9 Q. Okay. Would you mind --

10 A. What I'm saying is simply: Is one number
11 equal to or above or below the other number?

12 Q. And you use statistical-significance testing
13 to determine that?

14 A. No. I -- I'm saying that's what I observe in
15 any particular year.

16 Q. Uh-huh.

17 A. It's analogous to flipping a coin, and did it
18 come up heads or tails. And that's the model I have in
19 mind.

20 Q. Okay. Just in terms of telling the difference
21 between two -- individual two estimates -- so taking
22 aside the point about patterns --

23 A. Yeah.

24 Q. -- that you've made, how would you tell
25 whether the difference between two numbers is

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1 statistically significant?

2 A. You take the quantity as shown on the table,
3 and you have to look them up in a statistical table that
4 says: At what point did the differences attain, let's
5 say, 80 or 90 percent significance statistically or
6 95 percent or 99 percent? There's a regular way of
7 saying how confident can I be that the numbers differ
8 for this particular year --

9 Q. Uh-huh.

10 A. -- by analogy for this particular thermometer.

11 Q. Okay. Are there tests that help demographers
12 or statisticians evaluate statistical significance
13 between survey estimates?

14 A. Oh, yeah. Yeah, there's -- it's a standard
15 test that one applies.

16 Q. Would that be a T-test? Would that be one
17 such type of test?

18 A. That's one test. I don't know if that's the
19 one we use here, but there are a number of different
20 tests tailored to the data that one has and the question
21 one is asking.

22 Q. Okay. Just so I understand, what -- what
23 kinds of tests might help in different situations to
24 evaluate that?

25 A. I -- I taught undergraduate statistics about

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1 three years ago, and I'd have to go back to the textbook
2 with the appendix to see what the test is called now.

3 Q. Sure.

4 A. But I know that there is a test that would
5 apply to each particular year that you're referring to
6 in your hypothetical questions to me.

7 Q. Okay. So there are tests out there?

8 A. There are tests for that.

9 Q. Okay.

10 A. And then there are other tests that are
11 designed for a series of heads or tails in a coin flip.
12 Did it come up heads or tails? That is to say, did one
13 group come out with a higher number than the other group
14 over and over and over and over year by year, but before
15 it was a reverse trend.

16 Q. I --

17 A. That's the model that I have in mind, so
18 I'm --

19 Q. I understand. And what are those tests
20 called?

21 A. Again, I'd -- I'd have to look back in the
22 textbook that I used when I was teaching the course.

23 Q. Okay.

24 A. But there are -- there are tests to do that.
25 I just have -- you know, I -- I don't remember the names

1 of them.

2 Q. You don't remember the names of them?

3 A. But there's -- there is an applicable
4 statistical test that you use to judge a series of
5 binary possibilities.

6 Q. Okay. So to make sure I'm understanding,
7 there's a type of statistical test that you can run to
8 determine whether an individual difference between two
9 numbers is statistically significant, right?

10 A. In this case, in -- in one year, yes.

11 Q. Okay. And there's also tests that one can use
12 to determine whether a pattern over time is
13 statistically significant?

14 A. Yes, a historical pattern over many years,
15 whether there is a statistically significant turning
16 point or reversal.

17 Q. And did you run any of those tests here in --
18 in your --

19 A. I haven't yet run them, but I know -- I know
20 for sure that what I see that -- using the
21 flip-of-a-coin test, I can do a simple, you know,
22 calculation that tells me this did not happen by chance.

23 Q. But you haven't run any tests to do that?

24 A. I haven't run it. I -- I intend to run the --
25 I intend to run the formal tests that would document

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1 what I already know, just from my experience looking at
2 trends like this.

3 Q. Why didn't you run either of those kinds of
4 tests when you --

5 A. I wanted to make sure I -- I used the right
6 test. And there was kind of a time deadline I had to
7 get the report in, and I said the -- the test that will
8 document the statistical significance of this is
9 something I need to perform. I don't want to use one
10 test when I should use, perhaps, a different test. I
11 want to confer with a statistician colleague to find out
12 the appropriate test that would be used, and that is a
13 test that I will conduct now that I have some time to do
14 it.

15 Q. And why didn't you do it in the last, say, six
16 weeks or so since you submitted your report?

17 A. Because I had other deadlines --

18 Q. Okay.

19 A. -- and it was -- it wasn't anything I needed
20 to get done, you know, right away, as far as I was
21 concerned.

22 Q. And earlier, you testified that when you
23 produced your report, you had all the information
24 available that you needed to produce your report with
25 confidence. Is that still your testimony?

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1 A. That's still my testimony. I can tell --
2 without even doing the test, I can tell, looking at it
3 and -- and doing what I would characterize as a simple
4 calculation of a binary coin-flip test, the -- the
5 possibility of getting -- of -- of a simple coin-flip
6 test, which is analogous to what we have here, there's
7 no way that the change in trend that I pointed to could
8 have come about by chance.

9 Let me rephrase that. There -- I -- I can
10 say with confidence that there has been a change in --
11 and -- and I think I said in my report what I knew about
12 it at the time, which is I said at a point in time
13 starting around -- what was it -- '22 -- 2002 to 2004
14 that there was a change in trend. I think I -- and I
15 don't know where I stated it specifically, but --
16 actually, it's in -- on Page -- where I stated my --
17 let's see what page -- Page 3. I've stated it in the --
18 the bottom paragraph.

19 Q. Okay. Just give me a moment. I see -- yeah,
20 I saw your Footnote 4 about 10 flips of the coin. What
21 is the statistical principle you're relying on when you
22 use this coin flip?

23 A. I don't -- I don't know what the name is, but
24 it's -- it's kind of like -- you know, it's a real
25 simple thing. What are the -- what are the odds that

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1 you could get 10 flips of a neutral coin and they would
2 come up heads all 10 times? The chances of that
3 happening are quite remote.

4 Q. And --

5 A. And it's that model that I would be applying.
6 I just want to apply the formal test so that I know what
7 the name of the test is. It's -- it's kind of like you
8 just think that way, as a statistician, when you've done
9 it this way. It's a flip -- it's a binary, you know,
10 flip-of-the-coin model.

11 Q. Okay. So it's your testimony that you know
12 without doing any kinds of statistical tests whether the
13 differences between Black voter registration and voter
14 turnout and White voter registration and turnout that
15 you report are significant? Is that what you're saying?

16 A. No, no, that's not what I'm saying. What I'm
17 saying is a simple elementary statistical model that I
18 can do just, you know, on the back of an envelope
19 informs me about the conclusion I drew. Before I commit
20 it to writing, I wanted to find out if there is a more
21 elegant model for dealing with the pattern that I see
22 historically that would reveal even more about it. So I
23 have not yet done the test, but I know for -- for
24 certain that I can state with -- with -- I -- I can
25 state with a high degree of scientific confidence that

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1 there was a turning point, and that was the conclusion
2 that I had drawn at the time I drafted this report. And
3 I will supplement it with the formal tests that a
4 statistician would say, "That's what we use today to
5 deal with the simple model that you have called the --
6 the coin-flip model."

7 Q. Okay. So --

8 A. Because there -- there may be more information
9 that can be discerned with a more sophisticated model.

10 Q. So it's your testimony that you -- for your
11 initial report, you used this coin-flip model and that
12 you plan to offer supplemental expert opinions in this
13 case to do formal -- more formal tests of statistical
14 significance?

15 A. No. That's not my -- what I'm saying is I'm
16 going to document it by saying the test here is known
17 among statisticians not as the coin-flip model. It's
18 known as the -- I don't know if it's called a T-test or
19 an F-test or an L-test, but there is a name for the
20 test.

21 Q. Uh-huh.

22 A. I haven't had a chance to dig out a statistics
23 book and look it up, and I haven't had a chance to
24 confer and confirm with a statistician colleague that
25 this is the test one would use in this situation or

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1 there's, perhaps, a more refined one that might reveal
2 even more about it. But I know that the test that I
3 have used so far is -- is one that I can rely on for
4 scientific certainty to say that there has -- to state
5 the conclusion -- support the conclusion as I've stated
6 it in my report.

7 Q. And what is the test that you relied on?

8 A. I call it the coin-flip model. It's -- it's
9 so elementary that, you know, it -- it's the way -- it's
10 the way you test lots of things that are binary that are
11 either -- it's either above or below.

12 Q. Okay. Is there any literature that you can
13 point me to, sitting here today, about the coin-flip
14 model?

15 A. I would say any introductory statistics
16 textbook. I don't have one directly on my bookshelf;
17 otherwise, I would have looked it up.

18 Q. Okay. And in using the metaphor of a coin
19 flip, is it -- is it -- you're saying that, say, heads
20 would be that Black voter turnout is higher and tails
21 would be that Black voter turnout is lower than White
22 voter turnout? Is that --

23 A. Or the reverse --

24 Q. -- the metaphor?

25 A. -- yeah.

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1 Q. Okay.

2 A. You know, one -- one is above the other.

3 Q. Okay. All right. I think we'll get into that
4 a little bit more.

5 Okay. So still on Page 4 of your report,
6 which is Exhibit 2. I see you have it there. On -- you
7 say that, quote -- and this is the same paragraph:
8 Statistically marginal differences appearing over many
9 successive years can substantiate an authentic pattern
10 over time.

11 Right?

12 A. That's correct.

13 Q. What is an authentic pattern?

14 A. A gen- -- it means it really exists. It's not
15 a mat- -- it's not -- it's not something that is a
16 function purely of Rand and variation.

17 Q. Okay. And what's a statistically marginal
18 difference?

19 A. That would be a difference in which the
20 chances of it happening by chance might be 30 percent,
21 in which case you'd say, "Well, I'm 70 percent sure that
22 it's -- one number is higher than the other number, but
23 there's a 30 percent chance -- or let's make it simpler.
24 I'm 55 percent sure that one number is above the other,
25 but there's a 45 percent chance that it's the reverse of

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1 that. So I, basically, know nothing with any certainty.
2 I can just observe it.

3 Q. Okay. So looking at Table 1 and Table 2 --
4 Table 1 on the previous page. Let's start there. Is it
5 possible that some of the individual differences in
6 White voter registration and Black voter registration
7 and then, of course, White voter turnout and Black voter
8 turnout are statistically marginal?

9 A. Oh, it's entirely probable, sure.

10 Q. Entirely probable. Okay. But you don't know
11 which -- which ones are, or you haven't run any tests to
12 calculate that?

13 A. I haven't -- I mean, I've -- I've looked at
14 the confidence intervals around these numbers, and I
15 know that they are -- that they -- they often overlap.
16 And that's the reason that I have avoided making any
17 statement about any particular year, because the margins
18 of error do overlap very often.

19 Q. Okay.

20 A. So, I mean, I'm aware -- that's -- that's one
21 of the constraints in looking at the table of data and
22 saying, "Well, in a particular year, what do you know
23 about that year?" And the answer is the margins of
24 error overlap, and so it makes it very difficult to say
25 anything more than one is above the other. But we don't

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1 know if it is really above the other because of the
2 margins of error overlapping.

3 Q. Okay. And on Page 4, again. So you say that,
4 quote: These yearly differences -- I'm in the same
5 paragraph as before. Quote: These yearly differences
6 may disclose a statistically significant historic change
7 across several decades, and short discerning meaningful
8 patterns is an alternative approach for accommodating
9 specific instances where respondent self-reports might
10 be shown to have exaggerated measured rates of voter
11 registration and/or turnout.

12 Right?

13 A. That's what I said.

14 Q. Okay. And you didn't run any statistical
15 tests other than looking to the kind of coin-flip
16 principle you discussed to discern whether there is a
17 statistically significant historic change across several
18 decades?

19 A. Well, I did do a statistical test, like I say,
20 a back-of-the-envelope -- you know, the most elementary
21 test you could use. As a --

22 Q. Okay.

23 A. -- an undergraduate student of statistics,
24 you'd say, "Well, is -- is there a discernible trend
25 here?" And the answer would be -- the only thing you

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1 can make a clear statement about is one is above the
2 other. But if you look at it over time as a simple --
3 you know, the most elementary test, you can see that the
4 time trend over 40 years reveals a turning point.

5 Q. Uh-huh.

6 A. And that -- that -- I know that just from a
7 back-of-the-envelope calculation. I'd like to make a
8 more formal statement about it using the latest tests
9 that a statistician might say, "Well, this is a -- this
10 is an even more informative test that you should use."
11 As I say, I haven't really put in what that test is yet,
12 but I know -- I know that there is a significant pattern
13 here.

14 Q. Is it your view that if you aggregate a number
15 of statistically insignificant differences, that can
16 indicate a statistically significant difference across
17 time?

18 A. If you rephrase that slightly to say if you
19 examined a number of these things over time and said
20 with enough observations, you could make a statistically
21 significant statement about a trend over time, the
22 answer is yes. I think I phrased it slightly
23 differently than you did, but, yes, that's the whole
24 point of what I'm trying to say here.

25 Q. Okay. And what is the statistical principle

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1 by which insignificant individual differences between
2 estimates indicate a significant difference when
3 aggregated?

4 A. That's what I want to put in the text as a
5 very precise statement of -- of what we can know from a
6 time trend. And thus far, I have tried to make it
7 comprehensible to the average reader by saying it's the
8 coin-flip test. How many times can you get heads on a
9 coin before you say the coin, after 30 flips and it
10 always comes up head, you cannot conclude that it's
11 unbiased?

12 Q. All right. So back on Page 4. And I believe
13 we've covered this, but just to make sure I'm clear.
14 The meaningful pattern that you're observing is that,
15 quote, the data in Table 1 strongly suggests an apparent
16 change since 2004 in Black political participation.

17 A. That's what I said about Table 1. It strongly
18 suggests it.

19 Q. Uh-huh. Is it possible that the meaningful
20 pattern that you're discerning is actually a pattern of
21 over-reporting rather than a pattern in actual voting
22 behavior?

23 A. I can imagine -- I can imagine someone
24 conjuring up that notion. It would be quite fanciful.
25 And I also want to point out that Table 1 is a prelude

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1 to Table 2. I went from Table 1 to Table 2 because I
2 wanted more information. And it's actually Table 2 on
3 which my final opinion is based.

4 Q. Okay. Sure, we can look at Table 2.

5 A. So we're -- we're talking about Table 1,
6 saying it -- it sort of looks like something is going on
7 here, but you need more years of data.

8 Q. Uh-huh.

9 A. Then I went and got more years of data in
10 Table 2.

11 Q. Okay. So looking at Table 2, and just to make
12 sure I'm clear, is it possible that the pattern that you
13 discerned is actually a pattern of over-reporting? Is
14 that a possibility?

15 A. Anything is a possibility, including that,
16 yes.

17 Q. Okay. Rather than a pattern in actual voting
18 behavior?

19 A. Yes. There -- there are ways in which that
20 could happen that I could imagine.

21 Q. Okay. Would this approach you've described of
22 discerning patterns as opposed to calculating
23 statistical significance allow analysis in a situation
24 where there is a systemic reason where Black voters
25 over-report voting and registration at greater rates

1 than White voters?

2 A. I'm not sure I --

3 MR. CARDIN: Objection: form.

4 A. I -- I think it's kind of a -- I don't
5 understand.

6 Q. (BY MS. SMITH) Oh, yeah, I can rephrase. Of
7 course.

8 A. Yeah, rephrase it a little.

9 Q. So you -- you reference in your report -- I
10 believe we talked about that you acknowledged specific
11 instances where Black voters have over-reported turnout
12 at greater rates than White voters, right?

13 A. Where they -- it appeared to be the case based
14 upon the comparisons year by year with the margins of
15 error.

16 Q. Okay. So if there were evidence of systemic
17 over-reporting whereby Black voters over-report voting
18 at greater rates than White voters across multiple
19 elections, would this approach of discerning meaningful
20 patterns account for that possibility?

21 A. Not if the -- if -- if the -- the scenario
22 you've described, if that remained in place year after
23 year without anything else changing, the answer would be
24 no.

25 Q. Okay. As a demographer -- so how can you

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1 distinguish patterns in voting behavioral change from
2 systematic errors due to survey design?

3 A. Well, I have to -- I -- I have trouble
4 answering your question because I don't know what you
5 mean by systematic errors due to survey design. And
6 maybe if you try rephrasing the question --

7 Q. Sure. Let's -- let's rephrase the question.
8 Let's say: How can you distinguish patterns in voting
9 behavior from systematic errors due to over-reporting of
10 voting registration or turnout?

11 A. You can do so by making assumptions about what
12 the systematic errors are and whether they continue year
13 by year at the same level over time. If you cannot make
14 that assumption, then you have another -- another
15 dilemma.

16 Q. So did you assume when producing your report
17 that Black voters do not systematically over-report
18 voting and turnout on the --

19 A. No, I did not make that assumption.

20 Q. Okay. All right. So -- and just going back
21 to the notion of kind of an authentic pattern or a
22 meaningful pattern. So I'm back on Page 4 now. Sorry.
23 Actually, let's turn to -- one moment. Oh, yeah. So
24 the third full paragraph, you say that: Black
25 voting-aged citizens report having registered to vote at

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1 a higher rate than their White non-Hispanic counterparts
2 in eight out of the 10 most recent biannual elections.

3 So I take it from that -- and please
4 correct me if I'm wrong -- in your view, eight out of 10
5 is a meaningful pattern?

6 A. Well, it's meaningful to me. I -- I don't
7 know whether it is -- whether it attains the level of
8 statistical significance that I would want as shown in
9 Table 1 --

10 Q. Uh-huh.

11 A. -- because -- well, I'm sorry -- Table 1 as
12 opposed to Table 2, which is the more comprehensive
13 table. So Table 1 -- I think I've answered the question
14 about that for Table 1.

15 Q. Okay. So for Table 2, is your answer
16 different?

17 A. I'm trying to remember what -- what it is I --
18 what was the -- what is it that you are --

19 Q. Yeah, let's --

20 A. -- asking me --

21 Q. Let's go back a little bit.

22 A. All right.

23 Q. So I'm just -- I'm just trying to understand
24 what constitutes an authentic pattern --

25 A. All right.

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1 Q. -- or a meaningful pattern.

2 A. All right.

3 Q. So it sounds like eight out of 10 times,
4 that's a meaningful pattern, in your view?

5 A. Well, it -- it's -- it's a clue to wanting to
6 have more data. And eight out of 10 is something
7 where -- which prompted me to want to get the data in
8 Table 2 to say I need more -- more years in which to
9 establish the pattern. And that's why I'm basically
10 saying Table 1 in -- which I originally put together for
11 one reason, invited me to add on a further historical
12 perspective going back to 1980.

13 Q. Oh, yeah.

14 A. That's -- that's the big difference.

15 Q. Got it.

16 A. And once I got that, then I have the table in
17 Table 2 on which I base my opinion.

18 Q. So in Table 2, just to make sure I'm
19 understanding this right, you looked at -- when you say
20 eight out of 10, you're looking at the years from 2004
21 until 2022, and you're saying eight times, according to
22 CPS estimates -- I'm looking at voter registration for
23 now. According to CPS estimates for voter registration,
24 eight times since 2004, difference between Black and
25 White voter turnout was -- or -- sorry -- Black minus

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1 White voter registration was a positive value eight
2 times?

3 A. Eight out of whatever it was, yeah.

4 Q. Out of 10? Out of 10?

5 A. That -- that -- yeah --

6 Q. Okay.

7 A. -- that's an observation.

8 Q. Got it. Okay.

9 A. But that -- that's -- that's what I observed
10 in Table 1.

11 Q. Okay. And what if, let's say, that number
12 were seven times; would that still be a meaningful
13 pattern?

14 A. When I say "meaningful," what I'm saying is
15 it -- it looks like it might be statistically
16 significant. "Meaningful" means it's more than just
17 random.

18 Q. Okay.

19 A. But it's not -- "meaningful," to me, is it
20 suggests that this might be worth nailing down with more
21 years of data so that one can say it's not only
22 meaningful, but it can -- one can say that it is
23 statistically significant at a certain level, so...

24 Q. Okay. And what if that number were four
25 times; would that be a meaningful pattern?

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1 A. I'd have to think about it. I -- I -- four
2 times out of how many did you say?

3 Q. Out of 10.

4 A. Out of 10? No. That would be pretty much
5 random.

6 Q. Okay. And so we talked earlier about how you
7 haven't calculated statistical significance for each
8 individual year, right?

9 A. Correct.

10 Q. And you haven't looked at margins of error for
11 any of these years, right?

12 A. Well, I -- I've -- I've looked at them, and I
13 can tell right away that there -- in any given year, you
14 can't draw any conclusions because -- because the data
15 have margins of error that overlap. That's -- that's
16 one of the -- that's -- that's one limitation --

17 Q. Sure. So taking --

18 A. -- to looking at any given year.

19 Q. Taking that into account, let's say the
20 margins of error overlap in four of these individual
21 years. Would there still be a meaningful pattern over
22 time?

23 A. I -- I can't answer these off the top of my
24 head because I'd have to do the back-of-the-envelope
25 calculation, but generally -- you know, it depends on

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1 what you think I mean by "meaningful." My concern is
2 that there are too many comparisons that are not
3 meaningful for me to work off of just the data in
4 Table 1. So I needed to get the further observations to
5 see whether that remains so or whether that filled in --

6 Q. Yeah, and that's fine. We can stay on
7 Table 2. How are you sure that there is, in fact, a
8 pattern without taking into account statistical
9 significance of these individual differences?

10 A. If I can modestly say, when you've looked at
11 data like this enough times, you can tell just by
12 looking at it. The data here could well be attributable
13 to statistical chance. Certainly, there is not -- it --
14 it appears very dubious that this would pass a
15 recognized, you know, statistical significance test at
16 the 95 percent level.

17 Q. Okay. So, in other words, you know --

18 A. Judgment. It's like --

19 Q. -- you know it when you see it?

20 A. Yeah. I know it when I see it, yeah.

21 Q. Okay. I think that concludes that
22 conversation. I have some more questions about the
23 pattern you observed after 2004. Let's turn back to
24 Page 4 of your report. So your conclusion -- let's
25 actually turn to Page 6, because I think we've -- we've

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1 established that your conclusion is that there's been a
2 change since 2004 in Black political participation.

3 Right?

4 A. Yes.

5 Q. Okay. So on Page 6, you discuss this more.
6 So you note that there's two possible explanations for
7 this pattern. Do I have that right?

8 A. Tell me where on Page 6 you're --

9 Q. Oh, of course. Yes. So Paragraph 1, it's
10 labeled under "Basis for Conclusions and Opinions" --

11 A. Uh-huh. Okay.

12 Q. Okay. So --

13 A. Yeah. Okay. I'm with you.

14 Q. Great. So you say the first option is, quote,
15 a genuine break in the historical pattern of Mississippi
16 Black voters' political participation manifested itself
17 in these data starting around 2004. Do I have that
18 right?

19 A. Yes.

20 Q. Okay. Are you aware of any reasons why Black
21 voters' political behavior would have broken
22 significantly from historical patterns starting around
23 2004? Any explanations?

24 A. No. I'm just observing that around 2004, the
25 data tell me that there was a break -- there was an

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1 apparent break, and that is all that I'm documenting.

2 And I don't have an explanation for it other than

3 something changed.

4 Q. Something changed. Okay. And then the other

5 option that you note is that the apparent break arose

6 through a behavioral change but only among Black

7 eligible voters, whereby Blacks, but not Whites, began

8 over-reporting that they were registered to vote, and

9 especially, that they have turned out to vote.

10 A. Right.

11 Q. Okay.

12 A. That's what I said.

13 Q. That's what you said. Okay. So those are, in

14 your view, the two possible interpretations for the

15 change you saw in 2004?

16 A. Those are two possibilities. I don't know if

17 they're the only possibilities, but those are two

18 contrasting interpretations.

19 Q. And those are the two that you considered?

20 A. That's right, the competing -- the competing

21 explanations.

22 Q. And did you consider any other possible

23 reasons or explanations?

24 A. Well, you can consider -- you could consider

25 that Whites changed but Blacks didn't change. Blacks

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1 changed but Whites didn't change. Blacks and Whites
2 both changed in opposite directions. I mean, there's
3 some logical possibilities.

4 Q. Uh-huh.

5 A. And -- and you can exhaust the logical
6 possibilities, some of which are -- I would describe
7 them as fanciful.

8 Q. Uh-huh.

9 A. Or you can imagine them. But does anybody
10 have any evidence that they might conceivably exist?

11 Q. Uh-huh.

12 A. And so this is -- this is how one might
13 speculate thinking most broadly about what -- what could
14 account for this.

15 Q. Okay. Did you consider -- other than those,
16 did you consider any other possible explanations?

17 A. Not that I recall, no.

18 Q. Okay. And you conclude that it was Black
19 citizens' actual voting behavior that changed?

20 A. Yes.

21 Q. Okay. I want to introduce another exhibit.
22 All right. So I'll represent to you -- oh, sorry. I'm
23 going to mark Exhibit 15.

24 (Exhibit 15 marked.)

25 Q. (BY MS. SMITH) All right. So, again, I'll

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1 represent to you that I went to the CPS website that you
2 linked in your report below Table 1, so the Census
3 website, and I clicked "historical reporting voting
4 rates," and then I selected Table A-4 called "Reported
5 Voting and Registration for Total and Citizen Voting Age
6 Population for Congressional Elections" be- -- and then
7 this is between 1978 and 2022. All right?

8 A. Uh-huh.

9 Q. So this is CPS data. Does that sound --

10 A. All right.

11 Q. Okay. Could you turn this paper over for me,
12 and then, could you read for me after the word -- the
13 first time -- after "note because of changes"? Just
14 read that sentence for me.

15 A. You're saying at the top of the notes here?

16 Q. No. So I guess it's the fifth --

17 A. Oh, I see.

18 Q. -- one down.

19 A. Okay.

20 Q. "Note because --

21 A. "Note because" -- I see it.

22 Q. -- of changes." Yeah.

23 A. Yeah, the second paragraph. "Note" -- okay.
24 Just a second. Right. Yeah, I'm -- I'm familiar with
25 this --

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1 Q. Okay. So could you --

2 A. -- change.

3 Q. -- just read the -- the statement after the
4 word "note" there, "note because of changes"?

5 A. Sure. Do you want me to read it out loud?

6 Q. Yeah, or I can. So --

7 A. "Note federal surveys"?

8 Q. No. Sorry. "Note because of changes."

9 A. "Because of changes in the Current Population
10 Survey, race categories beginning in 2003, 2004 through
11 2022 data on race are not directly comparable with data
12 from earlier years."

13 Q. Okay. So would you dispute that here, the
14 Census Bureau is saying that pre-2004/post-2004 data are
15 not directly comparable?

16 A. That's what they say, yes.

17 Q. Okay. Because the race categories changed in
18 2003?

19 A. That's correct.

20 Q. And that change started being reflecting --
21 reflected in the 2004 --

22 A. Yes.

23 Q. -- data? Okay.

24 And do you agree with me that here, the
25 CPS -- or the Census is informing people of a limitation

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1 in how you can draw conclusions from its data?

2 A. They simply said they're not directly
3 comparable. That doesn't --

4 Q. Okay.

5 A. -- mean that you can't draw conclusions.
6 The -- what they're referring to is the respondents who
7 have the option of reporting more than one race.

8 Q. Uh-huh.

9 A. And what effect that has is it means that
10 numbers -- the number that would have been collected
11 under the old protocol would not exactly equal the
12 number collected under the new protocol if it had been
13 done in the old way. That doesn't mean that it
14 invalidates a comparison one makes in a place where
15 multiracial Blacks are a large share of the Black
16 population. Now, admittedly, that is a -- that is a
17 caveat, and I would not regard that as invalidating the
18 comparisons that I've made. And if -- if anything, I
19 would say you -- you could -- you could draw a num- --
20 you could probably draw several conclusions from it that
21 might go either way in terms of what I've concluded
22 in my -- in my paper, in my report.

23 Q. Okay. So just quickly. So I believe you
24 didn't agree that this is a limitation in CPS data.
25 Would you call it a caveat?

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1 A. It's a caveat.

2 Q. It's a caveat?

3 A. And it -- I mean, it -- it doesn't limit my
4 ability to draw conclusions. It is a caveat that is
5 worth my noting.

6 Q. Okay. And you said earlier that one should
7 consider the Census' own descriptions of its data,
8 right?

9 A. Say that again.

10 Q. Earlier, we talked about how one should take
11 the Census' own description of --

12 A. Yes.

13 Q. -- its limitations and its caveats, per se,
14 seriously. Right?

15 A. Yeah.

16 Q. Okay. So did you consider how the race
17 categories changed in 2003 when you conducted your
18 analysis?

19 A. I didn't at the time, but I can't see how they
20 would -- how they would change my conclusion if they are
21 a more genuine portrait of what's going on today as
22 opposed to what was going on from 1980 to 1996 or -- or
23 from 1980 to 2002.

24 Q. Okay. So you didn't consider how changes in
25 the current population -- the CPS race categories

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1 beginning in 2003, whether that might have caused the
2 differences you observed in the pre-2004 and post-2004
3 reported Black voter turnout and registration?

4 A. Well, in -- in just looking at the table, I
5 can -- I can see what effect it would have. It would --
6 it would mean that Blacks were equal to or exceeded
7 Whites starting in an earlier point in time.

8 Q. Did you consider -- I think my question was a
9 little bit different. Did you consider it when you were
10 producing your report in this case?

11 A. No, I -- I didn't consider it, no.

12 Q. Okay. And did your report acknowledge this
13 caveat from the CPS anywhere?

14 A. No, I don't believe I did acknowledge it in
15 any footnote anywhere.

16 Q. Okay. Would you -- would you say that
17 changing how race is categorized so that people can list
18 more than one race instead of just one is a major change
19 in a survey method?

20 A. It depends on -- on -- it's a -- it's --
21 it's -- it's a major -- it has a major effect in certain
22 parts of the United States.

23 Q. Okay.

24 A. It could have. In the case of Mississippi,
25 just looking at it now, I would say it doesn't change

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1 my -- my overall conclusion. And if anything, it would
2 reinforce it further.

3 Q. And did you consider that this change in race
4 categories might account for the, quote, historic break
5 you observed in 2004?

6 A. I want to be clear that when I say a "historic
7 break in 2004," I'm not saying it happened in that year.
8 I'm saying it manifests itself in the data in that year.
9 But I'm not saying it happened in 2004. I'm saying it
10 wasn't there before, and it is there now, ever since,
11 with virtually no exceptions. And that's my --
12 that's -- that's what I -- what I -- what I mean when I
13 say there was a historic break, and it occurred around
14 2004.

15 Q. Did you consider whether this manifestation of
16 a historic break is due to the change in race
17 categories?

18 A. I -- I can consider it right now and say it --
19 it --

20 Q. But did you consider it --

21 A. Oh, did I consider it?

22 Q. -- for -- yeah.

23 A. No, I did not.

24 Q. Okay. All right. So I want to talk a little
25 bit more about how the race categories changed in 2003.

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1 So if I can please mark the next exhibit. This is going
2 to be Exhibit 16.

3 (Exhibit 16 marked.)

4 Q. (BY MS. SMITH) And this is a publication
5 called "Revisions to the Current Population Survey
6 Effective in January 2003," written by employees of The
7 Bureau of Labor Statistics. All right?

8 A. Uh-huh.

9 Q. Great. So let's turn to Page 5. And on the
10 left-hand side, under "Changes in Race and Hispanic
11 Origin Data," it says, "Starting in January 2003,"
12 and -- and then it lists some changes that were made in
13 2003. All right?

14 A. Yeah.

15 Q. And then on the fourth bullet point down, it
16 lists that the following change was made, quote:
17 Individuals are allowed to choose more than one race
18 category. Prior to January of 2003, individuals who
19 considered themselves to belong to more than one race
20 were required to select a single primary race.

21 Right?

22 A. Yeah.

23 Q. So that's the change?

24 A. Right.

25 Q. Okay. So let's turn to the next page in the

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1 document, in the chart here. So I'll represent to you
2 the CPS -- sorry -- the -- the Bureau of Labor
3 Statistics reports that this is the CPS questions about
4 race before January 2003 and then starting in January --
5 after January 2003 --

6 A. Right.

7 Q. -- right?

8 All right. So just to sum up, before
9 January of 2003, people could choose one race among
10 these four options: White, Black, and then
11 American-Indian, Eskimo or Aleut, and then Asian or
12 Pacific Islander. Those are the four?

13 A. Right.

14 Q. Okay. And then after January 2003, the column
15 to the right of that, people could select multiple. So
16 they could choose one or more?

17 A. Show me where the mult- -- oh.

18 Q. "Choose one or more." Do you see that?

19 A. Oh, all right. Yeah, I see what you're --
20 right, right.

21 Q. Okay.

22 A. "Choose one or more." Okay. I get you.

23 Q. Okay. So they can say they're Black or White
24 after 2003?

25 A. Uh-huh.

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1 Q. Or they can choose both Black and White?

2 A. Correct.

3 Q. Or they could choose any other combination of
4 races?

5 A. Correct.

6 Q. Okay. All right. So if we could turn back,
7 please, to Exhibit 14, which is your underlying data
8 there.

9 A. (Hanging.)

10 Q. Oh, I have one, too.

11 A. Okay.

12 Q. I was just -- I was just pointing --

13 A. All right.

14 Q. -- to it. If we could look at that.

15 A. Yeah.

16 Q. All right. I just want to flip to 2002.

17 A. All right.

18 Q. All right. In the leftmost column, it looks
19 like in line with what we've just discussed, people are
20 listed as one race or another but not multiple. Right?

21 A. That's my understanding, yes.

22 Q. Okay. And then you compared among those
23 categories non-Hispanic White with Black, right? Those
24 are highlighted there?

25 A. Yes.

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1 Q. Okay. Now let's look at the next page, which
2 is 2004.

3 A. Yeah.

4 Q. Okay. Here now people are listed as White
5 alone or in combination or Black alone or in
6 combination, right?

7 A. Yes.

8 Q. Or Black alone or White alone, right?

9 A. Right.

10 Q. So people can be listed as having one race or
11 two or multiple --

12 A. Yes.

13 Q. -- in line with that change in survey methods
14 we talked about, right?

15 A. Right.

16 Q. Okay. So I see here White non-Hispanic alone
17 and Black alone or in combination are highlighted,
18 because those are the two categories that you were
19 comparing, right?

20 A. Yes.

21 Q. So why did you choose those two categories to
22 compare, White alone versus Black alone or in
23 combination?

24 A. For the year 2004?

25 Q. Yeah, so in the year 2004, when it started to

1 be possible to have a combination of races.

2 A. If you look at Table 2 where -- in my report,
3 the top, where it says "% Black (AP)" --

4 Q. Uh-huh.

5 A. -- that refers to any part Black.

6 Q. Uh-huh.

7 A. And I'm saying it was any part -- in other
8 words, I -- I did include those.

9 Q. Yeah.

10 A. Yeah.

11 Q. Yeah, so you included people who were --

12 A. Any part Black.

13 Q. -- any part Black versus people --

14 A. As soon as the Census -- as -- as soon as I
15 could.

16 Q. Okay. Yes, versus people --

17 A. Right.

18 Q. -- who were only White?

19 A. And your --

20 Q. Right?

21 A. Now -- and -- and what is your question about
22 why I did it?

23 Q. Yeah, I suppose to rephrase my question: Why
24 not compare, let's say, White alone versus Black alone,
25 or in com- -- or, as an alternate, Black alone or in

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1 combination to White alone or in combination?

2 A. Okay. Now I see what you're asking. The
3 answer is very simply that I wanted to remain current
4 with people who reported themselves being Black even
5 though they were multiracial.

6 Q. Uh-huh.

7 A. So what we have here is a secular trend over
8 time in which the Census Bureau is starting in -- I
9 think 2002 was the year -- beginning to acknowledge that
10 there are people who are racially Black and are
11 multiracial and they want to express their self-identity
12 to a question that acknowledges the way they see
13 themselves. And this is exactly the kind of secular
14 change that could account for what -- what I'm
15 displaying here is a transformation in how people
16 envision themselves. And I would note the -- in the
17 2002 table that you refer to in Exhibit -- what exhibit
18 is this?

19 Q. 14.

20 A. -- 14. 14.

21 Q. Yeah.

22 A. There's a very informative comparison that one
23 could make here just by looking at the table --

24 Q. Uh-huh.

25 A. -- which is the -- I'm sorry. In 2- -- for

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1 the year 2004, when that change was first made, if you
2 look at the "Total" column under "Population 18 and
3 Over," you will see -- that's the left column.

4 Q. Uh-huh.

5 A. Black alone, the population that was -- that
6 they -- they included for this particular, you know,
7 weighted sample, 698 Black alone, and there were 700
8 people, two more in their sample, who were identifying
9 as Black alone or in combination.

10 Q. Uh-huh.

11 A. So we have two out of 700. That would make
12 maybe a quarter of 1 percent or a fifth of 1 percent of
13 the respondents were picking up on this. And I look at
14 the next year, 2006, and I see that the -- the numbers
15 here are Black alone, 718; Black alone or in
16 combination --

17 Q. Uh-huh.

18 A. -- 718.

19 Q. They're the same. Okay.

20 A. And so, I mean, there's a -- there's a --
21 that's -- that's a clue as to what's going on. It's
22 undoubtedly statistically meaningless, but it says that
23 there are some people who are beginning to pick up on
24 the notion that they are multiracial --

25 Q. Okay.

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1 A. -- back in 2002-2004.

2 Q. Okay. So just to make sure I'm understanding,
3 let's say someone took the CPS in 2002 and one were
4 mixed race, so identified as Black and White. They
5 would have had the option to choose Black or White on
6 the CPS, right?

7 A. Say that again. I'm --

8 Q. So if I -- if one is mixed race and
9 identified --

10 A. Yeah.

11 Q. -- as Black and White in 2002 --

12 A. Right.

13 Q. -- on the CPS, they'd have the option to
14 choose either Black or White, right?

15 A. Or --

16 Q. Or another --

17 A. Yeah, yeah. Right, right.

18 Q. But they could choose one?

19 A. Right.

20 Q. And then after 2003, so from 2004 on, you can
21 choose both Black and White?

22 A. That seems to be the way this was set up with
23 the ACS. I'd -- I'd have to study -- I mean with the
24 CPS. I'd have to study it more -- more closely, but
25 just as I look at the data, I see evidence that the --

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1 the way the question was reworded starting in that year
2 was consistent with everything that I have said about a
3 developing change at that particular point in time, and
4 it does coincide with this change in definition. And I
5 haven't looked at the rest of the data, but it --

6 Q. Yeah.

7 A. -- it -- it's all consistent with my notion
8 that there was a change in the awareness of Blacks who
9 were being surveyed as to what they -- what they
10 regarded their identity as being.

11 Q. Okay. I think we can move on.

12 So you talked earlier about how you've
13 cited and reviewed some studies about over-reporting of
14 voter turnout and registration on surveys, right?

15 A. I've reviewed the political-science literature
16 that I could readily access and that was -- I deemed to
17 be the most timely and significant.

18 Q. Okay.

19 A. And my caveat here is that I'm not a political
20 scientist, but I want to know what political scientists
21 are saying that might afford me a different way of
22 viewing the data that I'm looking at as a demographer.

23 Q. Okay. So in your report, you've cited -- and
24 I'm looking at Footnote 7 here on Page 6 still.

25 A. Okay. Footnote 7 on Page 6 of my report, did

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1 you say?

2 Q. Yes. Page 6 of your report and at Footnote 7.

3 A. I'm sorry. I've got -- I've got the other
4 case.

5 Q. Oh, yeah. No worries.

6 A. Sorry.

7 Q. Take your time.

8 A. Here we go.

9 Q. A lot of paper.

10 A. Okay. Footnote 7. Now --

11 Q. Yeah.

12 A. Okay. What's your question?

13 Q. So you cited -- on the issue of
14 over-reporting, you have cited a piece by Satoshi
15 Kanazawa called, "Who Lies on Surveys, and What Can We
16 Do About It?" Right?

17 A. Yes.

18 Q. And you cite also a series of articles by
19 Abramson and Claggett from 1984 through 1991?

20 A. Yes.

21 Q. Okay. And the Kanazawa piece, that's from
22 2005?

23 A. Right, right.

24 Q. Okay. And then in the following footnote, you
25 cite the Berent, Krosnick and Lupia working paper from

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1 2011 that we talked about a little bit earlier?

2 A. That's the one that has -- was the basis for
3 the subsequent article that I said was in a
4 peer-reviewed journal.

5 Q. Okay. And -- and then you mentioned today
6 that you would additionally like to rely on the 2016
7 piece by those same three authors?

8 A. Correct.

9 Q. Okay. Did you rely on any other literature to
10 draw conclusions about over-reporting on surveys than
11 those that we've just discussed?

12 A. No. I -- I want to clarify that I -- the
13 point I was trying to make here was not that I was an
14 authority on what political scientists -- the -- the
15 latest word among political scientists about
16 over-reporting. What I wanted to make was simply the
17 point that this is a controversial issue, and the
18 controversy extends back to studies that were done a
19 long time ago. And in the case of Footnote 8, there was
20 a massive study, and now that it's been published, the
21 controversy continues on among academics to this date.

22 Q. And when you say there's a controversy, are
23 you referring to other studies that are not cited in
24 this report, or are these -- are these reflective of the
25 controversy that you mention --

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1 A. Well --

2 Q. -- the ones that you cite?

3 A. -- I'm -- I'm saying that in my re- -- in my
4 cursory review of the political-science literature,
5 virtually every author acknowledges that some people say
6 this is happening; other people say not. And then they
7 report that they did a study in a particular place at a
8 particular time, and they found something further to add
9 to the controversy. So it only makes it an ongoing
10 controversy among political scientists. Latest word,
11 still controversial.

12 Q. Late- -- okay. So --

13 A. Latest word, still controversial, so...

14 Q. Okay. So I --

15 A. That's what I know.

16 Q. Here's how I understand the controversy as you
17 described it. So on one side of the controversy, you
18 have Berent, Krosnick and Lupia saying that there is not
19 systematic over-reporting of voting or turnout or
20 registration, potentially; and on the other side, there
21 are other authors saying that there is. Can you point
22 me to authors other than Berent, Krosnick and Lupia who
23 would contest the over-reporting on voting surveys --
24 self-reported voting surveys occurs?

25 MR. CARDIN: Object to the form.

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1 You can answer the question.

2 A. I don't profess to be an authority on the
3 political-science literature in this -- on -- on this
4 topic. What I am convinced of is that it remains
5 controversial based upon the most recent study that I
6 have seen, which is the one that was -- the published
7 version of Berent, Krosnick and Lupia, who acknowledged
8 that there is a controversy. And they seem to make the
9 case that it's hard to say, but this could -- this
10 doesn't look like it's what other people are saying it
11 is, but we don't know.

12 So my conclusion is this is a healthy
13 discussion of what you find when you look at all the
14 different specific studies of specific elections at
15 specific points in time, and you find that sometimes
16 things occur and sometimes things don't occur, and it
17 leaves you wondering if -- well, maybe there is no
18 constant conclusion you can draw about there being
19 over-reporting or underreporting.

20 Q. (BY MS. SMITH) All right. So just to clarify
21 one point, so the most recent study that you've reviewed
22 on this topic was 2016?

23 MR. CARDIN: Object to the form.

24 You can answer the question.

25 A. I -- I would say the most recent study I've

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1 reviewed is the Berent, Krosnick and Lupia study that
2 was published, and I regard that as a most informative
3 study that now is -- if I were to refer someone to what
4 is the current state of the controversy, I would say
5 read their recently published peer-reviewed study.
6 That's kind of where the controversy stands among
7 political scientists today.

8 Q. (BY MS. SMITH) Got it. And then, can you
9 point me to, sitting here today, any other academics
10 that have published articles supporting Berent, Krosnick
11 and Lupia's view in --

12 A. No, I can't, and I -- I'm not a political
13 scientist.

14 Q. Okay. Thank you. So let's -- I want to walk
15 through some of the articles that you cite here.

16 MS. SMITH: So if you can please mark the
17 next exhibit. And this will be Exhibit 17 in the
18 record.

19 (Exhibit 17 marked.)

20 Q. (BY MS. SMITH) Okay. And this is an article
21 called, "Who Lies on Surveys, and What Can We Do About
22 It?" by Satoshi Kanazawa, published in fall 2005.

23 A. Uh-huh.

24 Q. All right. So you cite this article in your
25 report?

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1 A. Yes, I do.

2 Q. As a study suggesting that Black respondents
3 on the CPS over-report registering or turning out to
4 vote, right? Or for what proposition?

5 A. My -- my reading of this article is the title
6 says all that I need to know.

7 Q. Have -- have you read this article?

8 A. I scanned through it. I notice that it is now
9 approximately 24 years ago.

10 Q. Okay.

11 A. So it's not something that bears directly on
12 what I'm considering here.

13 Q. But you --

14 A. I -- I -- I wanted to get the flavor of what
15 the controversy is. And this is an article that starts
16 with the premise that people do lie on surveys. And I'm
17 not interested in knowing -- I'm not really terribly
18 interested in knowing much more about it other than that
19 it documents that as of 2005 -- or, actually, before
20 that, when the study was still under review to be
21 published, it was believed that people lie on the
22 surveys. And then I would say this -- this is probably
23 representative of what political scientists were
24 considering at that time. It is a -- sort of a
25 historical document, but of no immediate relevance to

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1 me, other than to flag it as one side of a controversy
2 that traces back to 2005.

3 Q. All right. And so you reviewed it when you
4 prepared your report?

5 A. I reviewed the abstract and I scanned through
6 it. I didn't see anything of -- of relevance to me in
7 terms of what I was doing.

8 Q. All right. Did you find it to be a reputable
9 article on the topic of over-reporting?

10 A. I can't say I read it with that in mind, so I
11 can't give you an opinion on that.

12 Q. Okay. But you relied on it in your report?

13 A. I cited it as an example. I didn't -- I
14 didn't re- -- I -- I can't say that I relied upon it. I
15 simply said this is an example of what political
16 scientists were considering as -- in the controversy
17 over do people lie about things like this.

18 Q. And do you agree with the author's conclusions
19 here about Black voters over-reporting turnout on
20 surveys?

21 A. I -- I can't answer the question because I
22 haven't read it carefully enough.

23 Q. Okay. And do you disagree with anything that
24 they said in this article that you remember?

25 A. The same answer.

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1 Q. Okay. I think we're done with that article.

2 Let's talk now about Berent, Krosnick and
3 Lupia's working paper from 2011. I know that you also
4 looked at the 2016 version, and I believe we'll get to
5 that, as well, but let's start with this one --

6 A. All right.

7 Q. -- the one that you cited.

8 All right. So I'll mark as Exhibit 18 a
9 working paper called "The Quality of Government Records
10 and Overestimation of Registration and Turnout in
11 Surveys: Lessons from the 2008 ANES Panel Study's
12 Registration and Turnout Validation Exercises."

13 (Exhibit 18 marked.)

14 Q. (BY MS. SMITH) There you go.

15 A. Thank you.

16 Q. Okay. So this is a report from 2011, so a
17 little over a decade ago?

18 A. Yeah.

19 Q. And it's a working paper, and you know it was
20 eventually published in 2016. Just to make sure I'm
21 clear on the record, why didn't you rely on the
22 published version in your report initially?

23 A. Because I was unaware of it having been
24 published until just a matter of days ago, when I was
25 reviewing my file in advance of the deposition, and I

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1 noticed that there was a reference to this by the same
2 authors as having been published. And it was now in a
3 peer-reviewed journal as opposed to a lengthy technical
4 report.

5 Q. Uh-huh.

6 A. I had studied the lengthy technical report in
7 great detail because I was very impressed by the
8 thoroughness of it.

9 Q. Uh-huh.

10 A. The exposition of it in terms of how it was
11 written is -- you know, left something to be desired
12 because it was -- was a whole lot of words for what it
13 found. And nonetheless, I read it very carefully, and
14 I -- I -- I realized that there were some important
15 conclusions that were derived from this very careful
16 analysis.

17 Q. Okay. And this working paper is based on a
18 data source from 2008 to 2009?

19 A. Yes. It's some panel study that the -- that
20 political scientists were looking at and was uncommonly
21 useful and informative to a political scientist who had
22 the time to really analyze the data.

23 Q. Okay. And that's the American National
24 Election Study survey?

25 A. That's correct.

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1 Q. And that's another survey, where, like the
2 CPS, people report their voting behavior?

3 A. I'd have to review the details of it, but I
4 know that it was a very prominent data- -- dataset that
5 was used and it was a study that had great relevance for
6 the questions that I had.

7 Q. Okay. And in your report, at Page 7, when you
8 conclude that the historic break in the CPS data that
9 you observe in 2004 whereby Black citizens start to
10 report higher turnout in registration than White
11 citizens, you're citing this paper to conclude that that
12 change, quote, cannot be attributed to just the
13 speculative claim of differential over-reporting by
14 Blacks, right?

15 A. Tell me what paragraph that is.

16 Q. Yes.

17 A. This is on Page 7?

18 Q. This is on Page 7. I'm at Paragraph 5.

19 A. All right.

20 Q. Quote: The break itself, though, cannot be
21 attributed just to the speculative claim of differential
22 over-reporting Blacks.

23 A. Right. I see where --

24 Q. I assume "by Blacks" is what --

25 A. Yeah. Right.

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1 Q. Okay. And then you cite to this Berent study?

2 A. Yes.

3 Q. Okay. So it's fair to say that the Berent
4 study at the time you wrote the report was your basis
5 for concluding that the break you observed after 2004
6 was not due to over-reporting?

7 MR. CARDIN: Object to the form.

8 You may answer the question.

9 A. What I'm paying attention to is the portion in
10 Paragraph 5 that's italicized: The apparent success of
11 turnout validation exercises in producing aggregate
12 turnout rates that are closer to reported official
13 turnout rates appears to occur not simply because the
14 exercises weed out liars but because the unrecognized
15 downward bias due to errors in government records is
16 stronger than the unrecognized upward bias in the actual
17 rate of turnout amongst survey participants.

18 Q. (BY MS. SMITH) Okay. So that statement by
19 Berent, et al. was the basis for concluding that, quote,
20 the break itself, though, cannot be attributed just to
21 the speculative claim of differential over-reporting by
22 Blacks?

23 MR. CARDIN: Object to the form.

24 You may answer the question.

25 A. It's a succinct statement of a much broader

1 consideration of that issue.

2 Q. (BY MS. SMITH) Okay.

3 A. I cite that simply because it -- it
4 encapsulates what they -- what they had to say in their
5 original report.

6 Q. Are there other bases for your conclusion
7 that, quote, the break itself, though, cannot be
8 attributed, just the speculative claim -- claim of
9 differential over-reporting by Blacks cannot be
10 attributed -- sorry. Are -- are there other bases for
11 that statement cited in your report?

12 A. Well, certainly, the -- the more elegant
13 statement of the point I just quoted that was in their
14 published report -- if you hand it to me, I can tell you
15 that that further confirmed what they were saying.

16 Q. Other than -- let me rephrase my question.

17 Other than this working paper and the 2016
18 published version of it, are you relying on any other
19 literature to conclude that over-reporting did not
20 account for that break?

21 A. I'm -- I'm not relying on anything directly.
22 I am acknowledging the fact that there is a controversy
23 among political scientists. And my view of the evidence
24 is that the published report by -- published report by
25 Berent and Krosnick and Lupia is probably the most

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1 informative current study as to what is at issue in that
2 controversy. And I don't profess to be -- to be an
3 authority on the political science that has been done on
4 both sides, but I know that it is an issue that is
5 controversial among political scientists and that it
6 gives me grounds for having considerable doubts about
7 what some people are attributing this change to other
8 than what I'm attributing it to.

9 Q. Okay. In looking at this working paper, does
10 this paper look at whether there is a racial disparity
11 in over-reporting?

12 A. I'd have to go through the details. If you're
13 talking about an observed racial disparity in
14 over-reporting -- well, let me -- let me see if I can
15 state this correctly. We don't know if there is an
16 over-reporting unless we know what the true report was.
17 So I guess I can't answer your question as there is an
18 assertion that there is over-reporting.

19 Q. So let me rephrase it. So this article is
20 looking at a method for validating a survey of
21 respondents' answers as to whether they registered or
22 voted against official government records, right?

23 A. That's not actually what they did.

24 Q. Okay.

25 A. That's not the comparison they made.

Page 206

1 Q. All right. Put more simply, does this article
2 address whether Black and White voters might over-report
3 voting at differential rates? Is that the topic of this
4 article?

5 A. Say the question again, please.

6 Q. Whether Black and White voters over-report
7 voting at differential rates, is that the focus of this
8 article?

9 A. I wouldn't say it's the central focus.
10 It's -- it's an issue that enters in. And they have
11 addressed the issue as best they can with the data that
12 they have at their disposal.

13 Q. Where is the -- where is the issue of Black
14 and White voters' over-reporting voting differential
15 rates discussed in this article? I didn't see it
16 addressed, but if you could point me to anything.

17 A. The -- I'm not sure that I can point to
18 exactly where they said something about something, but
19 the explanation that -- that they gave for the
20 observation that it appears that there's over-reporting
21 is picked up in the last paragraph of their unpublished
22 report on Page 8. And I'm going to read it into the
23 record: Taken together, this evidence suggests that a
24 major factor driving turnout overestimation in Internet
25 surveys may not be respondent lying. It may be the fact

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1 that people who choose to participate in such surveys
2 also choose to participate in elections at higher rates
3 than do people who do not participate in surveys.
4 Traditional approaches to turnout validation do not
5 solve this problem; they only mask it.

6 Now, that -- that's saying, basically,
7 there's something else very important going on here.
8 And in their published version, they have stated more
9 succinctly what one can conclude.

10 Q. So I didn't hear anything about race in that
11 passage, right, that you just read?

12 A. No, not about race. It's -- it's about
13 differential self-selection of those who report
14 accurately -- or -- or I'm sorry -- who are inclined to
15 report. This is not the only paragraph I relied on.

16 Q. So did they evaluate levels of over-reporting
17 by race in their study?

18 MR. CARDIN: Object to the form.

19 You may answer the question.

20 A. I don't recall that they addressed it
21 directly. They -- they addressed the circumstances that
22 might give rise to it and call them into question.

23 Q. (BY MS. SMITH) Okay. Let's move on to
24 Page 29 of this piece now.

25 A. All right.

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1 Q. Looking at the second full paragraph, I see
2 that they looked at government records of registration
3 and turnout from -- I believe it's six states listed
4 here.

5 A. Yes.

6 Q. Okay. And now let's turn to Page 66.

7 A. All right.

8 Q. I want to look at the discussion under the
9 subheading "The Impact of Survey Mode."

10 A. Okay. I'm with you.

11 Q. Okay. So here, it says that their
12 conclusions, quote, might seem to contradict evidence,
13 unquote, by other authors.

14 A. Where is that?

15 Q. "Our conclusion" -- just the first sentence --

16 A. Yeah. Okay.

17 Q. -- after --

18 A. All right.

19 Q. -- "the impact of survey mode."

20 A. Oh, I see. Okay. "Might seem to contradict
21 evidence."

22 Q. So "might seem to" --

23 A. Yeah.

24 Q. Okay.

25 A. Right.

Page 209

1 Q. And that other report, quote, found that
2 turnout reports were, indeed, intentionally inflated due
3 to social desirability response bias, unquote?

4 A. Uh-huh.

5 Q. Okay. Is that a yes?

6 A. Yes.

7 Q. Okay. The next sentence, it goes on to say,
8 quote: That evidence came from a telephone survey and,
9 therefore, converges with other evidence suggesting that
10 social desirability pressures can, indeed, distort
11 reports collected by telephone.

12 A. Yes, I see that.

13 Q. Okay. And then the authors say in the next
14 sentence that by contrast, quote, the 2008/2009 ANES
15 panel study, which is the dataset they're relying on,
16 involved data collected exclusively via self-completion
17 on computers and submitted via the Internet, a mode that
18 has been shown to be largely immune to social
19 desirability pressures in reports of turnout.

20 A. Yes.

21 Q. So the authors are saying their conclusion
22 showing what they say is high accuracy of the ANES, an
23 Internet-based survey, is actually consistent with other
24 literature about inflated reports of voting and
25 registering in telephone surveys?

Page 210

1 MR. CARDIN: Object to the form.

2 You may answer.

3 A. It -- I'm -- I'm -- I read this as they're
4 saying this is -- this is one of the things that people
5 are saying based on the research they did. I can't say
6 that I endorse it or, you know, they're right about it
7 and everything else is wrong, but, yeah, that's what
8 they said. I -- I --

9 Q. (BY MS. SMITH) That's what they said?

10 A. I don't dispute that they said it --

11 Q. Okay.

12 A. -- in this unpublished version.

13 Q. Okay. And earlier, we talked about how the
14 CPS is conducted over the phone. Do you remember that?

15 A. All right. If you say that's true, I'll --
16 I'll go with it.

17 Q. Okay. Is it fair to say that based on this
18 analysis from Berent and his coauthors, the CPS, which
19 they're not discussing here in this paragraph, is less
20 immune to social desirability bias because it's done
21 over the phone?

22 A. I would say it's one study that would point
23 in -- point towards that conclusion, but --

24 Q. All right.

25 A. -- it doesn't, by any means, mean it's true.

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1 Q. So according to what they say here, that would
2 be the case?

3 A. Yeah, they're saying this is one -- one point
4 that would be favoring that interpretation.

5 Q. Okay. And that's the conclusion of Berent and
6 his coauthors here --

7 A. That's correct.

8 Q. -- in the report that you rely on to come to
9 your conclusions --

10 A. Yes.

11 Q. -- about over-reporting on the CPS?

12 A. Right.

13 Q. All right. Let's see. All right. So since
14 2011, you're aware that other academics have -- are you
15 aware of whether other scholars have looked at Berent
16 and Krosnick's conclusions to see if they're accurate?

17 A. I have not pursued the political-science
18 literature since my initial foray into it, except to get
19 the published version of the -- whatever the title of it
20 is -- of the Berent, Krosnick and Lupia study, because I
21 found that to be the most comprehensive and informative
22 about what the literature was claiming to know at the
23 point it was published and had been peer-reviewed and
24 condensed down to firm conclusions.

25 Q. Okay. Do you know if other methods have

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1 become available to study the same questions?

2 A. I -- I do not. I can't say that I'm up to
3 speed on the latest studies. I'm -- as I say, I don't
4 stay current on political science as my primary field.

5 Q. Okay. So you didn't look into whether other
6 reports were more comprehensive than this one?

7 A. I -- I know that if there had been important
8 studies that had been published, I would have caught
9 them in the last two months, but this is what I worked
10 with when I examined the literature.

11 Q. All right. So I want to introduce another
12 article about over-reporting. All right. And I'll mark
13 this as Exhibit 20 in the record. This is an article
14 called --

15 MR. BERRY: Just to be clear.

16 MS. SMITH: Of course.

17 MR. BERRY: I think maybe it's 19.

18 MS. SMITH: Oh, I'm sorry about that.

19 Yeah, you're absolutely right. Thank you.

20 (Exhibit 19 marked.)

21 Q. (BY MS. SMITH) All right. So this is an
22 article called "Validation: What Big Data Reveal About
23 Survey Misreporting and the Real Electorate" by Stephen
24 Ansolabehere and Eitan Hersh at Harvard University and
25 Yale University -- University, respectively, published

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1 in Political Analysis in 2012. All right?

2 A. Uh-huh.

3 Q. Are you familiar with the journal Political
4 Analysis?

5 A. I am not familiar with it. I assume it's a
6 reputable journal.

7 Q. Okay. Looking at the abstract here, I see
8 that Ansolabehere and Hersh are looking at surveys and,
9 they are, quote -- I'm reading off of the third line:
10 Leveraging developments in technology and improvements
11 in public records, we conduct the first ever 50-state
12 vote validation. We parse over-reporting due to
13 response by us from over-reporting due to inaccurate
14 respondents. We find that nonvoters who are politically
15 engaged and equipped with politically relevant resources
16 consistently misreport that they voted. This finding
17 cannot be explained by faulty registration records,
18 which we measure with new indicators of election
19 administration quality. Respondents are found to
20 misreport only on survey items associated with socially
21 desirable outcomes.

22 All right?

23 A. Yes.

24 Q. All right. So they're conducting -- looking
25 down here under "Introduction," I see it mentions,

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1 fourth line down, that they're also looking at the 2008
2 national election study.

3 A. Yes, I see that.

4 Q. Okay. So would it be fair to say that, based
5 on what we just looked at, they're using data from all
6 50 states?

7 A. Well, that's what they appear to say in the
8 abstract, yes.

9 Q. Okay. And they're looking at over-reporting
10 and whether it can be attributed to faulty registration
11 records?

12 A. If that's what it says in the abstract.
13 That's all I know about the study. I haven't read it.

14 Q. Okay. You haven't read this? Then you didn't
15 come across this in your review?

16 A. No. I mean, I can --

17 Q. Okay.

18 A. -- only comment -- I can only answer your
19 questions that you're asking me about a paper that I
20 haven't read yet, so...

21 Q. Okay. I understand. Thank you. And as I
22 read that abstract that we just went over, they conclude
23 that misreporting accounts for evidence of
24 over-reporting, not faulty registration records?

25 A. If that's what it says, that's what they

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1 found.

2 Q. Okay. At the bottom of that page, do you see
3 that they say, quote: A new era characterized by
4 high-quality public registration records, national
5 commercial voter lists and new technologies for big data
6 management creates an opportunity to revisit survey
7 validation? Right?

8 A. Yes.

9 Q. All right. And staying on Page 438, where we
10 are now, going to the third full paragraph down --

11 A. All right. The one that begins "in
12 demonstrating"?

13 Q. Yes.

14 A. Okay.

15 Q. So I'll just point you to that paragraph and
16 say that they state here, quote: This analysis reaches
17 different conclusions than a recent working paper of the
18 ANES, which asserts that self-reported turnout is no
19 less accurate than validated turnout and, therefore,
20 that survey researchers continue to rely on reported
21 election behavior.

22 And they're citing the 2011 working paper
23 from Berent, Krosnick and Lupia, right?

24 A. Yes.

25 Q. All right. So they reached different

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1 conclusions than those offered by Berent, Krosnick and
2 Lupia?

3 A. Yes.

4 Q. All right.

5 A. And this study reinforces my conclusion, which
6 is that this is an actively controversial issue among
7 political scientists who are coming up with evermore
8 studies that bear on the controversy.

9 Q. Uh-huh. Okay. And at the beginning of the
10 next paragraph, they say here, quote -- they're using --
11 sorry -- quote, the new validation -- a new validation
12 method that addresses the problems that have plagued
13 past attempts at validating political surveys?

14 A. Yes.

15 Q. Okay. And earlier, we discussed how a 2011
16 working paper from Berent, Krosnick and Lupia used data
17 from six states?

18 A. I don't remember the details, but I'll take
19 your word for it --

20 Q. Okay.

21 A. -- if that's what they said.

22 Q. Yeah. And that's what we discussed a moment
23 ago. And here, they're using data from all 50 states?

24 A. That's what they say.

25 Q. And that's more than what Berent, Krosnick and

Page 217

1 Lupia did?

2 A. That -- it's -- this study is including all
3 states, not just a subset of states.

4 Q. Okay. Thank you. So I know we've talked
5 about the 2016 Berent and Krosnick piece where they
6 reiterated some of the same conclusions, right?

7 A. Yes.

8 Q. Okay. So could I mark as the next exhibit,
9 please...

10 (Exhibit 20 marked.)

11 Q. (BY MS. SMITH) All right. So I'm marking as
12 Exhibit 20 in the record a piece called "Measuring Voter
13 Registration and Turnout in Surveys: Do Official
14 Government Records Yield More Accurate Assessments?"
15 It's in Public Opinion Quarterly, August 2016, with
16 three authors, Matthew Berent, Jon Krosnick, Arthur
17 Lupia. Okay? Here you are.

18 All right. I don't think we need to spend
19 long on this one. I just wanted to give you an
20 opportunity to look over it and confirm this is the 2016
21 paper that you additionally relied on in preparation for
22 your deposition today.

23 A. Yes, I -- yes. Let me just make sure this is
24 the one.

25 Q. Yeah, please.

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1 A. Yes, this is the one that I noted came out in
2 a peer-reviewed journal. I discovered that footnoted
3 last week, and it is the study that I have been
4 referring to as the published version that is -- and
5 when was it published? August 2016.

6 Q. Okay. And they're using the same dataset and
7 offering similar conclusions?

8 A. The only thing I know about this published
9 version is I've compared it with the original technical
10 study. And the -- this is a more refined exposition of
11 that original study. This is not an update of what they
12 did; this is simply a -- transforming a technical report
13 into a publishable journal article that says this is
14 what we found in that technical study framed in a way
15 that it relates to issues that political scientists can
16 understand. And I would point to the abstract, which
17 begins on the first page and continues onto the second
18 page at the top, where they say: As a result, when
19 validated turnout estimates appear to be more accurate
20 than self-reports because they produce the -- produce
21 lower turnout estimates, the apparent accuracy is likely
22 an illusion.

23 Q. Okay. I think that concludes our discussion
24 on that. I just wanted to make sure we had an agreement
25 on what the 2016 piece was.

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1 A. Sure.

2 Q. I want to introduce another article about
3 over-reporting. This will be Exhibit 21 in the record.

4 (Exhibit 21 marked.)

5 Q. (BY MS. SMITH) This is an article called
6 "Validating Self-Reported Turnout by Linking Public
7 Opinion Surveys with Administrative Records" by Ted
8 Enamorado, a professor of political science at the
9 University of North Carolina at Chapel Hill, and Kosuke
10 Imai, a professor of government and statistics at
11 Harvard. And it's in Public Opinion Quarterly.

12 A. All right.

13 Q. And I take it you're not familiar with this
14 article because you mentioned you haven't reviewed
15 anything since 2016?

16 A. I certainly haven't seen this one.

17 Q. Okay. Do you dispute that it was published in
18 2019 in Public Opinion Quarterly?

19 A. I agree that that's what it says, yes.

20 Q. Okay. And I believe you testified earlier
21 that Public Opinion Quarterly is a reputable
22 peer-reviewed academic journal?

23 A. It is.

24 Q. Okay. And that's the same journal that the
25 Berent, Krosnick and Lupia piece was published in?

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1 A. I'd have to check, but I'll take your word for
2 it.

3 Q. Okay. And we talked earlier about this, but
4 you've cited Dr. Imai before in your 2017 article?

5 A. I just want to make sure that I gave the
6 correct answer to this.

7 Q. Oh, yeah.

8 A. You said it was published in -- I didn't keep
9 track of which journal it was published in, but can
10 you --

11 Q. Oh, yeah. So looking back at the Berent --

12 A. Yeah.

13 Q. -- piece in Public Opinion Quarterly --

14 A. Okay. Yeah, that -- that's the same one.
15 Right.

16 Q. -- Exhibit 20, if you want to --

17 A. All right.

18 Q. All right.

19 A. Okay. I'm -- you're correct.

20 Q. Okay. Great.

21 A. Now, what's your question?

22 Q. Have you cited Dr. Imai before?

23 A. Not to my knowledge, no.

24 Q. We talked earlier about how in the East Ramapo
25 School District opinion, the Court referenced that you

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1 cited Dr. Imai in a 2017 article that you published.

2 A. I may well have cited it. I -- I don't keep
3 track of everyone I cite.

4 Q. Okay.

5 A. If you have a record of that, then I would
6 revise my -- my answer --

7 Q. Okay. Sure.

8 A. -- and say, well --

9 Q. That was --

10 A. -- you've proven the point.

11 Q. That was the article --

12 A. Yeah.

13 Q. -- about BISG that we talked about.

14 A. Oh, the BISG, yeah.

15 Q. Yeah.

16 A. Sure.

17 Q. That's the same person?

18 A. Right.

19 Q. All right. So I want to turn to Page 745
20 here. We're going to look at the discussion after the
21 word "Conclusion."

22 A. All right.

23 Q. So Imai and Enamorado write, starting here:
24 The availability -- over the last decade, the
25 availability of large-scale electronic administrative

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1 records has enabled researchers to study important
2 questions by creatively merging them with other
3 datasets.

4 Right?

5 A. Yes, at least that's what they say.

6 Q. So new methods of merging large-scale
7 administrative records with other datasets have become
8 available since 2011. That's what they're saying?

9 A. Correct.

10 Q. All right. And those methods, as I understand
11 this, can be used to evaluate self-reporting on surveys?

12 A. If -- if you have the right -- if you have the
13 right administrative record data that is proven to be
14 accurate and timely.

15 Q. Okay.

16 A. If you merge it with -- with garbage data, you
17 will have garbage in and garbage out. So that -- I
18 mean, the point here is that it's easier to merge
19 data -- scientific data with administrative record data.

20 Q. Okay. Let's turn back a few pages to 742.

21 A. All right.

22 Q. And I'm looking at the second full paragraph
23 here, and the last two sentence -- last three sentences
24 of this paragraph. So do you see that the researchers
25 say, quote, our finding contradicts the claim put forth

Page 223

1 by Berent, Krosnick and Lupia in 2016 that survey
2 respondents do not often over-report turnout?

3 Do I have that right?

4 A. That's right.

5 Q. Okay. And that's because, quote, these
6 authors show that matched respondents tend not to
7 over-report; however, they did not separate matched
8 voters from matched nonvoters and, as a result,
9 overlooked the tendency of matched nonvoters to
10 over-report?

11 A. I see that.

12 Q. Okay. So they're contesting Berent, Krosnick
13 and Lupia's 2016 article because their study did not
14 separate matched voters from matched nonvoters?

15 A. Yes.

16 Q. And -- because matched nonvoters do tend to
17 over-report voting. That's what it says here?

18 A. That's what it says.

19 Q. All right. And you -- you didn't consider
20 this critique of the Berent, Lupia and Krosnick study
21 before you relied on it?

22 A. I can consider it right now before -- as we
23 speak.

24 Q. But I'm not -- not asking about right now; I'm
25 just asking about --

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1 A. Okay.

2 Q. -- when you were preparing the report.

3 A. I didn't consider it, but it -- it only
4 reinforces my earlier conclusion that this is an
5 actively controversial topic that is the subject of
6 research among political scientists.

7 Q. Okay.

8 A. And it sounds like it is -- it is very
9 controversial, and they are making progress over time.

10 Q. Making progress over time. That's what this
11 reflects?

12 A. In -- in what can be known and what cannot be
13 known.

14 Q. Okay. Do you know if Berent, Krosnick and
15 Lupia have responded to this article?

16 A. I -- I know that if they did respond, it
17 wouldn't yet be in print because the -- the time to
18 respond to a study of this vintage would require another
19 study that could take at least several years to get the
20 study started, the funding for it. And then it would
21 have to go through the peer-review process. So if it
22 had been addressed, I would be surprised if there was
23 anything published yet about it.

24 Q. Do they have any working papers?

25 A. I haven't -- I haven't really looked to see if

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1 they have any. As I said, I didn't do the most
2 comprehensive search that a political scientist might
3 have done.

4 Q. Okay. And you don't know if they're working
5 on any response to this?

6 A. No.

7 Q. All right.

8 A. I don't have any knowledge about that.

9 Q. I suppose taking the timing issues aside of
10 getting a survey like this prepared, which I take your
11 point, does not responding in the academic literature to
12 a critique like this imply any concession of its
13 validity?

14 A. Oh, no. This is -- this is just another
15 contribution to a controversy. You know, you -- when
16 you do a study like this by -- in a published --
17 peer-reviewed and published in a reputable journal, it
18 says, "We did a study, and we found something
19 different."

20 Q. And --

21 A. And it has the same status that -- the other
22 study that was published that said, "We found something
23 earlier that you didn't find."

24 Q. And so --

25 A. And so the ideas compete, and time passes.

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1 And over time, one weighs the evidence and says, "Well,
2 there's -- this is a controversial topic." And I know
3 from my personal experience that whenever you work with
4 administrative record data, as soon as you're talking
5 about administrative record data for all states, you're
6 getting into a huge problem area where the quality of
7 administrative records on voting behavior varies
8 immensely from state to state. And I know that from
9 firsthand experience because I have evaluated that.
10 That's within my area of expertise. And I can say if
11 these two authors think that they have discovered the
12 truth and they have been working with administrative
13 record data, I want to see some kind of a book published
14 on how they know that the administrative records that
15 they have for all of the states for each state have
16 passed muster, because I know that -- I know that that
17 just doesn't -- that doesn't ring true.

18 Q. Okay. Sure. But you didn't read this
19 article?

20 A. I didn't read it, but the premise here is that
21 there's no problem with the administrative record data
22 we used. And I say, well, granting -- granting you the
23 most generous, most charitable assumption that you
24 didn't get into any trouble with states that don't do a
25 good job, you -- you haven't -- you haven't discovered

Page 227

1 the -- the ultimate truth here. This is another worthy
2 study that adds to the controversy and informs us, and
3 it --

4 Q. But you didn't read their discussion of the
5 quality of administrative records?

6 MR. CARDIN: Object to the form.

7 You may answer the question.

8 A. I -- I didn't read their -- I didn't read what
9 they said about it, but I can tell you that there is no
10 way -- there is no humanly possible way that anybody
11 could certify that all of the administrative records on
12 the elections in all the states that they got their
13 hands on were perfect. What they did say, apparently,
14 is that there are ways to integrate these that can be
15 done very efficiently. But it's the quality of the data
16 that I would say -- without even reading this, I can
17 say, "I need to read what you did for quality assurance
18 on the data."

19 Q. (BY MS. SMITH) Okay. So you would need to
20 read the article?

21 A. I'd need to read this.

22 Q. Okay.

23 A. And -- and I don't have any opinion on this
24 other than to say that it's another contribution --

25 Q. Got it.

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1 A. -- to the debate.

2 Q. Okay. I think that concludes our discussion
3 of that article. And I want to shift gears a little
4 bit.

5 MS. SMITH: I don't think I have too many
6 more questions, so if anyone needs a break, we can take
7 one, but I want to be mindful of --

8 THE WITNESS: Sure.

9 MS. SMITH: -- folks getting to the
10 airport and all. So I -- I would like to just keep
11 going.

12 MR. CARDIN: Keep going.

13 THE WITNESS: Fine with me.

14 MS. SMITH: Great.

15 Q. (BY MS. SMITH) Okay. So I want to -- you
16 testified earlier that you reviewed the report that
17 Dr. D'Andra Orey submitted in this case?

18 A. You'll have to refresh my memory on --

19 Q. Sure.

20 A. Are -- is he the opposing expert?

21 Q. Yes.

22 A. Yes, I -- I scanned through it, yes.

23 Q. Okay. So I'm now going to mark the first
24 report that Dr. Orey submitted in this case.

25 MS. SMITH: If I can please get...

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1 (Exhibit 22 marked.)

2 Q. (BY MS. SMITH) All right. So I'm marking as
3 Exhibit 22 the amended expert report of Dr. Byron
4 D'Andra Orey, and that's dated -- I actually don't see a
5 date on this, so I apologize, but this is the first
6 amended expert report of Dr. Byron D'Andra Orey. All
7 right?

8 A. All right.

9 Q. And feel free to take a moment to look at it,
10 but is -- is this the report that you reviewed?

11 A. As best as I can determine from looking at
12 this.

13 Q. Okay.

14 A. Let me just take a quick look through it.

15 Q. Yeah.

16 A. When -- when was this report submitted?

17 Q. I believe it would have been August --

18 MR. CARDIN: Let's -- let's go off the
19 record for a second.

20 MS. SMITH: Let's go off the record.

21 (Recess taken from 2:57 to 3:05 p.m.)

22 Q. (BY MS. SMITH) All right. So just to
23 clarify, Dr. Morrison, you don't offer any opinions
24 about the conclusions that Dr. Orey came to in his
25 original, first or second amended Senate Factor 5

1 report?

2 A. I -- that's correct.

3 Q. Okay. And so you don't offer any opinions in
4 this case about any of the methods Dr. Orey used?

5 A. Not at this time, no.

6 Q. Okay. Okay. And you didn't review any of
7 those three reports?

8 A. Not to my knowledge, no.

9 Q. Okay. But you did review Dr. Orey's rebuttal
10 report served on November 22nd, 2023?

11 A. My recollection is I took a cursory look at
12 it, yes.

13 Q. Great. So let's mark that into the record.

14 (Exhibit 23 marked.)

15 Q. (BY MS. SMITH) So this is the responsive
16 expert report of Dr. Byron D'Andra Orey. Here you are.

17 A. Let me just take a moment to look at this so I
18 can be sure this is the one I looked at.

19 Q. All right.

20 A. Okay. Yes, I remember reviewing this, yes.

21 Q. Okay. So you did review this report?

22 A. Yeah, I gave it a cursory read, and I got
23 the -- the sense of what he was saying about my report.
24 And let me just finish so I can refresh my memory here.

25 Q. Sure.

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1 A. Okay. I -- I remember reviewing the portion
2 where he was talking about my report, yes. So I'm --
3 I'm ready.

4 Q. Thank you. All right. I want to pull out
5 another recent academic study on the over-reporting
6 issue. And I -- I realize you didn't review this, but
7 I'll represent to you that it was cited in Dr. Orey's
8 initial reports. This is an article called "The Current
9 Population Survey Voting and Registration Supplement
10 Overstates Minority Turnout" by Stephen Ansolabehere
11 from Harvard University, Bernard Fraga from Emory
12 University and Brian Schaffner from Tufts University.
13 I'm going to mark this as Exhibit 24.

14 (Exhibit 24 marked.)

15 Q. (BY MS. SMITH) There you are.

16 A. Thank you.

17 Q. Okay. And you haven't reviewed this article
18 before?

19 A. No, I've not seen this before.

20 Q. All right. Would you agree with me that this
21 was published in 2022 in -- I believe it's The Journal
22 of Politics --

23 A. Yes.

24 Q. -- at the bottom?

25 A. Yes.

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1 Q. Okay. Do you -- are you familiar with The
2 Journal of Politics?

3 A. I know of it. I've heard of it. It's a
4 reputable journal.

5 Q. Okay. Reputable political science journal?

6 A. Yes.

7 Q. All right. Let's turn to -- we're still on
8 Page 1. I'm just looking at the summary text here. And
9 on the third line, it says that this -- these authors
10 are, quote, comparing CPS estimates to official voter
11 turnout records from 2008 to 2018 and document
12 consistent significant discrepancies that call into
13 question the reliability of CPS turnout statistics.

14 A. I see that.

15 Q. You see that? Okay.

16 And it concludes in the next sentence
17 that, quote, specifically, the CPS overestimates Black
18 and Hispanic turnout relative to non-Hispanic Whites,
19 whether relying on turnout rates as a share of eligible
20 citizens or the racial/ethnic composition of the voting
21 population.

22 Do you see that?

23 A. Yes.

24 Q. All right. And then turning to the next page,
25 under "Comparing Voter File and CPS Turnout Estimates,"

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1 I see here it says, quote, we compare turnout for
2 different racial groups as estimated by the CPS with
3 turnout for those same groups based on voter files.

4 All right?

5 A. Yes.

6 Q. And then about four lines down from there, it
7 says they relied on data from six southern states?

8 A. Yes.

9 Q. Okay. And then beginning of the following
10 paragraph, it says that they used voter file data
11 collected by a voter file firm that has an established
12 track record of producing estimates of the total number
13 of voters closely aligned with semiofficial statistics?

14 A. Yes.

15 Q. And then turning to Page -- the third page in
16 this document, so the next page -- thank you -- the
17 right-hand side at the top reports their findings. It
18 says, quote, 2016, the turnout rate among Whites was
19 10.8 percentage points higher than the turnout rate
20 among Blacks. 2018, the gap in turnout rates was 8.6
21 percentage points. Yet, researchers relying on the CPS
22 to examine turnout rates in these six states would find
23 a gap in participation rates of just 3.7 points in 2016
24 and 2.5 points in 2018.

25 A. Yes.

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1 Q. Do I have that right? Okay.

2 Based on their study, then they conclude
3 in the following paragraph, quote, the CPS consistently
4 overstates the participation rate among Blacks and
5 Hispanics while it sometimes underestimates
6 participation among Whites.

7 A. I see that, yes.

8 Q. And they're looking specifically at the CPS?

9 A. Yes.

10 Q. And just to go back for a moment to our
11 discussion earlier about the literature you cited in
12 your report, do you remember if any of those studies
13 looked specifically at the CPS as opposed to the ANES?

14 A. I don't recall offhand. I -- I don't think I
15 can answer your question offhand. I just -- I'm -- I'm
16 paying attention to what you've got here --

17 Q. Of course.

18 A. -- and I'm wondering: What does this have to
19 do with Mississippi now?

20 Q. It's a study showing over-reporting.

21 A. In?

22 Q. In the CPS, which is the --

23 A. Right.

24 Q. -- data source that you relied on in your
25 report.

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1 A. But in other states, not Mississippi, though.
2 Is -- have I got that correct?

3 Q. The authors are making conclusions about the
4 CPS at large.

5 A. Yeah. Okay. But Mississippi was not part of
6 their study.

7 Q. No, but you used the CPS in your --

8 A. Yeah, I -- I realize that, but I'm just saying
9 this is about states other than Mississippi. And so I
10 just want to be clear that there's no direct connection
11 with what's going on in Mississippi as opposed to what's
12 going on in some other collection of states currently.

13 Q. Earlier, we looked at the states that Berent,
14 Lupia and Krosnick discussed. Did they look at
15 Mississippi specifically?

16 A. I -- I don't know. I'm just -- I'm focusing
17 on this --

18 Q. Okay.

19 A. -- particular one. But anyhow. Go ahead.
20 I'm just -- I'll answer the questions as best I can.

21 Q. So you don't know if Berent, Krosnick and
22 Lupia looked at Mississippi specifically?

23 A. I'd have to look at it, but I'm just saying in
24 this one -- you're asking me about this study, which has
25 the virtue of being current, timely, and they have done

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1 a study about the CPS, and they've looked at it in a
2 half a dozen states, as I -- as I review -- read it.

3 Q. Would -- would -- just to make sure I'm
4 understanding your point about Mississippi's inclusion
5 in the data source, if Berent, Krosnick and Lupia did
6 not look at Mississippi, would you discount the
7 relevance of that study to your report?

8 A. I wouldn't discount the relevance. I would
9 just say it's a qualification that this paper is about
10 what they found occurring in states other than
11 Mississippi and -- which brings into my mind, well,
12 there's a big caveat here. You know, you have to assume
13 that people in Mississippi behave the same way as the
14 people in these six states. I'm just saying that's a
15 caveat that I took note of and an important one that
16 would -- would make this a study that I would want to
17 know about, but I wouldn't -- I wouldn't --

18 Q. But you don't --

19 A. -- place a whole lot of weight on it, even
20 though it's quite -- quite timely. And again, I would
21 say it's another contribution to a controversial issue.
22 They're saying in some states that aren't Mississippi,
23 which is my focus, they're finding something that is
24 important and informative about the CPS. And I also
25 know that, you know, the CPS, unlike any other data

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1 source that anybody has, covers 42 years of history, and
2 none of these studies do.

3 Q. Okay.

4 A. So that's what I'm weighing, you know.

5 Q. Okay. But you haven't reviewed this before?

6 A. I -- I haven't -- I haven't reviewed it
7 carefully. I -- I can just say that I'm -- I -- I guess
8 I'm aware of it now.

9 Q. You're aware of it now, but you weren't aware
10 of it before now?

11 A. I --

12 Q. Or were you aware of it?

13 A. I don't think I was aware of this.

14 Q. Okay. Let's finish up with this article. The
15 end -- so going to the fifth page, the very last
16 sentence of the article --

17 A. All right.

18 Q. -- the author -- the authors say they, quote,
19 suggest that analysts use caution when making inferences
20 about variation in turnout rates by ethnic and rac- --
21 racial and ethnic groups. Is that right?

22 A. Yes.

23 Q. Okay. Do you agree that reputable scholars
24 here have pointed out that analysts should use caution
25 when making inferences based on the CPS?

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1 A. I think that's a -- it's a good conclusion to
2 reach based on what you've shown me here. To conclude
3 that after doing this research, you ought to use
4 caution. That's about the right calibration --

5 Q. Okay. Understood.

6 A. -- or an opinion.

7 Q. Thank you. Let's talk about one more article.
8 And thank you for your patience today.

9 (Exhibit 25 marked.)

10 Q. (BY MS. SMITH) So marked as Exhibit 25 is an
11 article called "Vote Over-Reporting While Black:
12 Identifying the Mechanism Behind Black Survey
13 Respondents' Vote Over-Reporting." This is by Clinton
14 Jenkins, Ismail White, Michael Hanmer and Antoine Banks,
15 who are professors at -- or academics at
16 Birmingham-Southern College, Princeton University and
17 University of Maryland. It was published in American
18 Politics Research in 2021.

19 A. I see that, yeah.

20 Q. Okay. And this was cited in the Orey rebuttal
21 report that you reviewed --

22 A. Uh-huh.

23 Q. -- is that right?

24 A. If you say it's true, I'll -- I'll take your
25 word for it.

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1 Q. So we can -- we can take a look, if you'd
2 like.

3 A. Okay.

4 Q. And turning back to the Orey rebuttal
5 report --

6 A. Okay.

7 Q. -- I'll point to Page 1, Footnote --

8 A. Yeah.

9 Q. -- 1.

10 A. Uh-huh.

11 Q. Do you see it cited there?

12 A. Yes.

13 Q. Okay. But you haven't read this article
14 before?

15 A. I -- I guess I'm aware of its existence as a
16 recent article, but I haven't really reviewed it.

17 Q. Okay. You haven't reviewed it. Is that
18 right?

19 A. That's correct.

20 Q. Okay. Do you know of the journal American
21 Politics Research?

22 A. I don't know of it, but it sounds like it's
23 one of a number of journals that are peer-reviewed.

24 Q. Okay. Would you agree that it's a paper in a
25 reputable academic journal for political science?

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1 A. I -- I -- I don't have enough knowledge to say
2 if this is, you know, a top journal or, you know, just
3 another journal. I see it's associated with Sage, which
4 Sage Publications has a lot of journals where academics
5 publish things so they can say, "I published something."
6 But I'll take -- I'll assume it's a reputable journal.

7 Q. Okay. Okay. So looking at the abstract right
8 here --

9 A. Uh-huh.

10 Q. -- it says here that this paper is looking at
11 the fact that it -- okay. Quote: It is now a
12 well-documented fact of survey research that Black
13 survey respondents over-report turning out to vote at
14 higher rates than many of their peers of other racial
15 and ethnic backgrounds.

16 Is that what --

17 A. Yes.

18 Q. Okay. Quote: We bring renewed attention to
19 this phenomenon by investigating how the ways in which
20 the race of the interviewer might influence a Black
21 respondent's propensity to over-report turning out to
22 vote?

23 A. Yes, I see it.

24 Q. All right. And then just going to the
25 left-hand side, bottom of that page, about three lines

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1 from the bottom, it says they find, quote, that the need
2 to conform to norms of Black political behavior
3 activated by the presence of Black interviewers appears
4 to be the chief causal mechanism underlying Black
5 respondents over-reporting in the ANES. Right?

6 A. Yes.

7 Q. Okay. And then they say that these results
8 suggest that the common practice of race-matching Black
9 interviewers with Black respondents may greatly inflate
10 Black voter turnout in surveys?

11 A. Yes.

12 Q. Okay. So these authors in a reputable journal
13 are concluding that a couple mechanisms could lead to
14 differential over-reporting by Black voters --

15 A. That -- that's what they're saying, yes.

16 Q. -- on self-reported voting surveys?

17 All right. We're almost done,
18 Dr. Morrison. I want to look back at Exhibit 18 for
19 just a moment, which is the 2011 Berent, Krosnick and
20 Lupia working paper that you relied on --

21 A. Yes.

22 Q. -- to support your conclusions about
23 over-reporting on surveys. I'd like to turn to Page 29
24 of that article.

25 A. All right. I've got it here.

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1 Q. What states' government records did Berent,
2 Lupia and Krosnick evaluate to match voters on the ANES
3 in their study?

4 A. I -- I can't answer that question, as we sit
5 here, without reading it and figuring out. What states?

6 Q. Yeah. So which six states are listed there?

7 A. Oh. Oh, you're asking me what --

8 Q. Yes.

9 A. Yeah, it says right here.

10 Q. Yeah, it says right there.

11 A. California, Florida, New York, North Carolina,
12 Ohio and Pennsylvania.

13 Q. Is Mississippi one of those states?

14 A. No, it's not.

15 Q. Does that affect the weight that you placed on
16 the survey when you came to your conclusions?

17 A. No, because -- no, it doesn't. I mean, it --
18 it has uncovered anomalies that could exist anywhere,
19 and it has offered an alternative explanation for
20 something that is happening. And this is the -- this is
21 not the published version, so it's not as elegantly
22 explained. But I take this as -- despite its not
23 including Mississippi being a -- signaling a cautionary
24 note about concluding that what's going on here is as
25 simple as some other published -- published versions are

1 making out, that it's this -- this is what's causing
2 some problem or that's what causing it. It's a very
3 complicated thing, and different people are finding
4 evidence of different things.

5 Q. Okay. I think --

6 A. And --

7 Q. Oh, yeah. Go on.

8 A. I mean, so -- and so, you know, each one of
9 these papers kind of contributes to the debate among
10 academics, but none of them has a 42-year continuous
11 record of data that had been scientifically collected
12 and evaluated and whose limitations are understood
13 according to Census Bureau standards, and that's --
14 that's my unique strength in my study.

15 Q. Okay. And earlier, you testified that the
16 2022 Ansolabehere article in -- I believe it was
17 published in 2022 -- that we should caveat those results
18 because Mississippi was not one of the states that they
19 specifically looked at?

20 A. Yes, I -- I would say it -- it -- it's not
21 based on experience in Mississippi, and I -- I would say
22 that Mississippi's experience, I think, is understood
23 among historians. I'm just speaking as a -- as a
24 layperson. Historians regard Mississippi's experience
25 as rather distinctive in the United States.

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1 Q. Does the same caveat apply to the article that
2 you relied on, this working paper by Berent, Lupia and
3 Krosnick?

4 MR. CARDIN: Object to the form.

5 You may answer.

6 A. I don't think I can answer that question.
7 I -- I -- I just -- I -- I -- I can't give you an honest
8 answer. I -- I'm not sure what I would have to say
9 about that at this point.

10 Q. (BY MS. SMITH) Okay. I think that concludes
11 my questions.

12 MS. SMITH: Do you have any?

13 MR. CARDIN: We have no questions.

14 MS. SMITH: All right. Thank you,
15 Dr. Morrison, for your time today.

16 THE WITNESS: You're very welcome.

17 MS. SMITH: That concludes the deposition
18 today.

19 THE REPORTER: And did you want the
20 witness to read and sign?

21 MR. CARDIN: Yes.

22 (Deposition concluded at 3:27 p.m.)

23 (Review was requested pursuant to Federal
24 Rule of Civil Procedure 30(e)(1).)
25

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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3 I, Stacy L. Jordan, Certified Shorthand
4 Reporter, in and for the State of Texas, certify that
5 the foregoing deposition of PETER A. MORRISON, PH.D. was
6 reported stenographically by me at the time and place
7 indicated, said witness having been placed under oath by
8 me; that review was requested pursuant to Federal Rule
9 of Civil Procedure 30(e)(1); and that the deposition is
10 a true record of the testimony given by the witness.

11 I further certify that I am neither counsel
12 for nor related to any party in this cause and am not
13 financially interested in its outcome.

14 Given under my hand on this the 20th day of
15 December, 2023.

16
17 _____
18 Stacy L. Jordan, CSR, RPR, CRR, CLR
19 Shorthand Reporter No. 7499
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22 Time used by each party:
23 Ms. Casey Smith - 5:22
24
25